

SUPERIOR COURT BERGEN COUNTY
FILED

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ATTORNEY FOR PLAINTIFF AND THE PUTATIVE CLASS

MAY - 1 2017

Laura A. Lombardi
DEPUTY CLERK

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

-against-

KING BIO, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO.: **BER-L-2981** -17

CIVIL ACTION

**COMPLAINT AND JURY
DEMAND IN CLASS ACTION**

OVERVIEW

By this civil action, Plaintiff brings claims on his own behalf and on behalf of those similarly situated (the "Class"), to redress nationwide injury inflicted by Defendant on the United States consumer public through the advertisement, marketing, distribution and sale of an over-the-counter product, in liquid form, that makes therapeutic claims that are entirely false and lacking in even a scintilla of objective truth. In sum, and as we show, Defendant's product claims are fabricated nonsense.

As detailed below, Defendant, on a nationwide basis and by way of explicit product advertisement, descriptive literature, product labeling and web site claims,

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advertised, promoted, marketed, distributed and sold a homeopathic formulation (see below) called *Dr. King's Natural Medicine Multi-Strain Flu Relief* ("Flu Relief") as effective in, and to be used for, the prevention, cure, mitigation, and therapeutic treatment of Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea.

Indeed, Defendant explicitly claims, represents and promises, on its web sites and on the product label, that Flu Relief is effective for treatment of the Flu, and is to be used for the prevention, cure, mitigation, and therapeutic treatment of symptoms associated with the Flu, including fatigue, headache, nausea, fever, body aches, vomiting and diarrhea.

But, as we show, Flu Relief contains nothing but water, and as alleged below, all of Defendant's claims, promises and representations with respect to Flu Relief, its nature and purported efficacy, are bogus fabrications, lacking in even a scintilla of scientifically-objective truth.

The basic principles of homeopathy were formulated by an individual named Samuel Hahnemann in the late 1700's. Homeopathy is based on the view that disease symptoms can be treated by minute, often undetectable, doses of substances that produce similar symptoms when provided in larger doses to healthy people. For example, poison ivy, which causes rash and skin irritation in a healthy individual, can, after being serially diluted and succussed (discussed, *infra.*), cure itching and skin

irritation; or, (another example) since an onion can cause runny eyes and a runny nose in a healthy individual, according to homeopathic theory, derivatives of the red onion, after being serially diluted and succussed, will relieve allergy symptoms of runny eyes and nose.

Another core homeopathic belief is the “law of infinitesimal doses” – that the more a substance is diluted, the more potent it becomes. Simply put, under homeopathic theory, infinite dilutions of a substance (often in water), to the point where not a single molecule remains, have medical benefit. Indeed, homeopathy posits that the water used in an extreme dilution process – when dosed to a human – “remembers” the substances that were in it in the past and thus delivers therapeutic benefit. Thus, Defendant claims that its Flu Relief cures Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea, because it contains water – nothing else – that remembers that it once had other substances in it.

Homeopathic medicines are made using a process called “dilution and succussion.” Dilution is the serial deconcentration of a substance, in steps of either one part in 10 or one part in 100. Each step of that deconcentration includes and is followed by a vigorous shaking or succussion step. In the case of Defendant’s Flu Relief, the dilution and succussion processes of the product’s alleged principal ingredient, duck

liver, are repeated, **many trillions of times**. Specifically, constituent ingredients in Flu Relief are diluted to the point of **10^{-400}** .

To give clarity to the aforementioned mathematical calculation (10^{-400}), it means that the original one part of constituent ingredient in Flu Relief (duck liver) is diluted until it is equal to the fraction expressed as one trillion times one trillion, repeated 33 times. This fraction can also be expressed as follows:

[illegible]

That is the amount of constituent ingredient remaining in Flu Relief; in other words, *nothing*. In light of the foregoing extreme dilution process, the resulting formulation contains not even microscopically detectable components of the original active ingredient. Simply stated, Defendant markets water for flu relief.

Homeopathy violates basic principles of physics, chemistry, and biology. The idea that water remembers what was once in it is almost comical – and it also implies that every sip of water you take "remembers" virtually every substance on the planet, although homeopaths appear not to recognize this. Yet homeopathic "drugs" are a multi-billion dollar business today, with a significant increase shown in the importation and domestic marketing of homeopathic drug products.

A Homeopathic Drug is any drug labeled as being homeopathic which is listed in the Homeopathic Pharmacopeia of the United States (HPUS), an addendum to it, or its

supplements. The HPUS is a compilation of standards for source, composition, and preparation of homeopathic drugs. The HPUS contains monographs of drug ingredients used in homeopathic treatment. The potencies of homeopathic drugs must be specified in terms of dilution. But OTC homeopathic drugs, like Flu Relief, may not be sold for conditions not amenable to self-diagnosis of symptoms and treatment. The conditions and symptoms that Flu Relief purports to treat are not amenable to self-diagnosis and treatment. Moreover, it is elementary that Defendant may not make claims that are not truthful.

The claims made by Defendant in connection with the advertisement, marketing and sale of Flu Relief, including but not limited to the claim that it treats and/or mitigates Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea, are not truthful. They are fabricated.

Defendant's claims and promises with respect to the purported efficacy, therapeutic and monetary value of Flu Relief, were calculated and designed to lead members of the class to believe that Flu Relief was a lawful, appropriate therapy for disease. Members of the class relied on Defendant's therapeutic claims and purchased the product based on those bogus therapeutic claims.

Members of the class were deceived by Defendant's claims and paid a purchase price based on its purported therapeutic value. Flu Relief has no therapeutic value. It is comprised of water – nothing else.

A 2015 comprehensive assessment of evidence by the Australian Government's ***National Health and Medical Research Council*** has concluded that there is no evidence that homeopathy is effective for any health conditions. *See* Australian Gov't Nat'l Health and Med. Research Council, *NHMRC Information Paper: Evidence on the effectiveness of homeopathy for treating health conditions* (2015), https://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/cam02a_information_paper.pdf.

Dr. Adriane Fugh-Berman, Associate Professor in the Department of Pharmacology and Physiology at Georgetown University, and an expert of homeopathic drugs, has concluded that homeopathic remedies are not supported by any competent and reliable scientific evidence. She has concluded that the effects of high dilution homeopathic products are placebo effects, and that this has been confirmed by most high-quality randomized, controlled, clinical trials.

And, Dr. Freddie Ann Hoffman, the CEO of HeteroGeneity, LLC, a company that provides consulting services to the marketers of botanicals, probiotics, and complex

products and who previously chaired the FDA's homeopathic working group, has concluded that no homeopathic drug has been scientifically proven effective.

Defendant's claims and promises as aforesaid – that Flu Relief is efficacious for Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea – constitute material misstatements of fact under the New Jersey *Consumer Fraud Act*. *See, Lee v. Carter-Reed Co., L.L.C.*, 203 N.J. 496, 522 (2010), citing N.J.S.A. 56:8–2 and defining “unlawful practice” as any misrepresentation in connection with the sale or advertisement of any merchandise. Defendant's claims and promises with respect to Flu Relief – that it constitutes an effective treatment and therapy for disease, including Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea – is conduct and practice that stands “outside the norm of reasonable business practice.” *See, Turf Lawnmower Repair, Inc. v. Bergen Record Corp.*, 139 N.J. 392, 416 (1995), *cert. denied*, 516 U.S. 1066 (1996).

The putative class comprises all New Jersey purchasers of Flu Relief, who purchased Defendant's product during the one year period preceding the filing of this suit.

1. At all times relevant, Plaintiff Harold M. Hoffman had a place of residence in the State of New Jersey, County of Bergen. Plaintiff was exposed to and read, saw and/or heard Defendant's labeling, and marketing claims and promises with respect to

Flu Relief, and thereafter purchased the product online, in reliance upon Defendant's labeling and marketing claims and promises, in November of 2016, for a purchase price of \$14.99.

2. At all relevant times, Defendant **KING BIO, INC.**, was a corporation organized and existing pursuant to the laws of the State of North Carolina, with a principal place of business located in Asheville, NC.

3. In addition to illicit product advertising, marketing and labeling of Flu Relief, Defendant operates the web site *www.kingbio.com*, among others, wherein it makes and publishes claims and promises with respect to Flu Relief, as aforesaid, that are bogus, materially false, and in contravention of the New Jersey Consumer Fraud Act.

4. Defendant advertised, marketed, distributed and sold Flu Relief in commerce throughout the United States.

5. At all relevant times, plaintiff was and is a consumer, with a residence in the State of New Jersey, County of Bergen.

6. At all relevant times, Defendant constituted a "person" as defined in the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1(d)*.

7. For the one-year period preceding the filing of this action, Defendant, through retail and/or other distribution, including *online* distribution and sale, advertised, promoted, marketed, labeled, distributed, promoted and sold Flu Relief as intended to mitigate, prevent, treat or cure disease.

8. According to Defendant's advertisements, including its website claims, promises and representations, and product labeling, Flu Relief is allegedly comprised of a formulation of substances which have been repeatedly diluted to the point of non-existence; not even microscopic existence.

9. In marketing and selling Flu Relief to the U.S. consumer public, coupled with false and fabricated therapeutic claims, Defendant violates the New Jersey *Consumer Fraud Act*, by representing, in its advertising, on its web site and product label, and in promotional literature, that Flu Relief has therapeutic effect on disease; and that it is efficacious in the prevention, mitigation, treatment and cure of disease, including but not limited to Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea.

10. Based on Defendant's illicit advertising and marketing efforts and product labeling, including the foregoing unlawful claims, Defendant is believed to have sold

substantial quantities of Flu Relief, to consumers throughout the nation, including the State of New Jersey.

11. Defendant makes the foregoing unlawful claims of product efficacy in its product advertising, on its web sites and product label, and/or in promotional literature, which tout, claim and offer Flu Relief as possessing therapeutic properties capable of preventing, treating and curing disease including but not limited to Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea.

12. Furthermore, Flu Relief is offered for conditions that are not amenable to self-diagnosis and treatment by individuals who are not medical practitioners; therefore, adequate directions for its use cannot be written so that a layperson can use Flu Relief safely for its purported (albeit bogus), intended purposes.

13. The marketing of Flu Relief to treat disease is a potentially significant threat to the public health.

14. Defendant's blatant misrepresentations and false claims regarding the efficacy of Flu Relief were designed to and did lead class members to believe that it is effective for Flu, fatigue, headache, nausea, fever, body aches, vomiting and diarrhea (as claimed by Defendant). Members of the Class relied on Defendant's misrepresentations

and would not have purchased and/or paid **any** purchase price for Flu Relief but for Defendant's false claims and misrepresentations.

15. Plaintiff brings this suit to recover funds taken by Defendant as a consequence of its deception of consumers through the marketing and sale of Flu Relief based on bogus and fabricated claims of efficacy.

16. The affirmative claims, promises and representations made by Defendant in connection with the marketing, advertisement and sale of Flu Relief, as aforesaid, are false and violative of the New Jersey *Consumer Fraud Act*.

17. Members of the putative class are purchasers of Flu Relief and, prior to purchasing the said product, saw, read and/or heard and relied upon Defendant's advertisements, product labeling, promises, claims and representations, as aforesaid.

18. Members of the class, prior to purchasing the said product, saw, read and/or heard Defendant's promises, product labeling, including website claims and representations as aforesaid, and made an out of pocket payment to Defendant in response thereto and in reliance thereon.

19. The very purpose of the New Jersey Consumer Fraud Act is to protect consumers, such as the putative class members at bar, from being victimized by false and/or illegal promises and claims with respect to product efficacy, value, and benefit.

20. In truth and fact, Defendant misrepresented the nature, efficacy, value, and benefit of Flu Relief. Plaintiff and members of the class paid for misrepresented, allegedly therapeutic product that Defendant affirmatively represented to be effective in the mitigation, treatment and cure of disease, as aforesaid.

21. U.S. consumers made purchasing decisions and did, in fact, make purchases from Defendant based upon Defendant's specific claims and representations of product nature, efficacy, value, and benefit for a claimed, therapeutic purpose.

22. Defendant has affirmatively misrepresented, and mislabeled Flu Relief.

23. The affirmative claims, promises and representations made by Defendant – both in product labeling and in marketing and web site advertisements and representations – in connection with Flu Relief, are false, fabricated and misleading. Members of the class were entitled to trust the Defendant's labeling and marketing representations and advertisements with respect to its product. The product delivered by Defendant to members of the putative class was materially misrepresented.

24. Defendant's advertisements, promises and representations concerning Flu Relief, are illegal, false and constitute a deception; a misrepresentation; an unconscionable trade practice; a sharp and deceitful marketplace practice, and are a false promise.

25. Defendant's advertisements, promises and representations concerning Flu Relief result in nationwide consumers who purchased the product, being subjected to misrepresentation, false promise, fraud, deceit, trickery and false and deceptive advertising.

26. Defendant has made affirmative misrepresentations and has engaged in concealment of material facts in connection with the sale, marketing and/or advertisement of Flu Relief, and to induce its sale.

27. Members of the putative class suffered ascertainable loss in the form of actual out of pocket payment and expenditure, as aforesaid, as a result of Defendants' unlawful conduct as aforesaid. Members of the putative class paid hard earned money and received from Defendant, in exchange, a product that contains only water and which delivers no therapeutic effect and/or value. Indeed, there was a substantial difference between the price paid by consumers, including plaintiff and class members, for the Defendant's product, and the represented value of the product. Here, for their

money, members of the Class received a useless, 2 oz. container of water to be ingested orally. Members of the Class did not receive the "benefit of their bargain."

28. Plaintiff and members of the class also suffered ascertainable loss when they received, for their money, an over-priced product that is objectively less than, inferior to, and different from, the product promised by Defendant. The Defendant's product failed to measure up to the consumers' reasonable expectations based on the representations made by Defendant. Thus, purchasers of said products were injured and suffered loss.

29. For their money, members of the class received something less than, and different from, what they reasonably expected in view of Defendant's representations. Indeed, consumers did not anticipate purchasing a useless bottle of water – a fact material to the transaction that was affirmatively misrepresented by Defendant. As a result, consumers suffered ascertainable loss.

30. In cases involving a seller's misrepresentation – such as the instant case – the measure of such harm can be either the buyer's loss of the "benefit-of-the bargain," i.e., the difference between the price paid by the buyer and the value that had been represented by the seller, or, alternatively, the buyer's "out-of-pocket" loss, i.e., the difference between the price paid and the actual value, if any, supplied. *See, Zeliff v.*

Sabatino, 15 N.J. 70, 74 (1954); *Finderne Mgmt. Co. v. Barrett*, 402 N.J. Super. 546, 574 (App. Div. 2008), certif. denied, 199 N.J. 542 (2009). *And see, D'Agostino v. Maldonado*, 216 N.J. 168, 191-92 (2013) (in cases involving breach of contract or misrepresentation, either out-of-pocket loss or a demonstration of loss in value *will suffice to meet the ascertainable loss hurdle* and will set the stage for establishing the measure of damages. Citing, *Thiedemann v. Mercedes-Benz USA, L.L.C.*, 183 N.J. 234, 248 (2005) (emphasis added)).

31. Defendant marketed and sold Flu Relief - and consumers purchased it - as a result of, and on the premise that, the said product was being sold to deliver specified benefit. Thus, there is a causal relationship between the Defendant's misrepresentations of efficacy and the loss suffered by plaintiff and class members. *See, Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543 (2009) (it is sufficient to allege that the loss occurred "as a result" of the unlawful conduct).

CLASS ALLEGATIONS

32. Plaintiff brings this suit as a class action individually and in behalf of others similarly situated pursuant to New Jersey Court Rule 4:32. Subject to additional information obtained through further investigation and/or discovery, the definition of the Class may be expanded or narrowed. The proposed Class consists of all New Jersey

residents who purchased Defendant's *Flu Relief* during the one year period preceding the filing of this suit. This action has been brought and may properly be maintained as a class action pursuant to New Jersey Court Rule 4:32.

Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. The Class is comprised of consumers throughout the State of New Jersey.

Commonality: Common questions of law and fact exist as to all members of the Class. These common questions predominate over the questions affecting only individual Class members, and include:

- a. Whether Defendant made affirmative misrepresentations in violation of the New Jersey Consumer Fraud Act;
- b. The appropriate measure of damages sustained by the Plaintiff and/or other members of the Class.

Typicality: Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Class, purchased Flu Relief, after exposure to the same misrepresentations and/or omissions in Defendants' advertising and received a product less than and different from the promised product. Plaintiff is advancing claims and legal theories typical to the Class.

Adequacy: Plaintiff's claims are made in a representative capacity on behalf of all members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.

33. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class. Plaintiff is also an experienced attorney who has been previously appointed class counsel for certified classes of consumers by both state and federal courts. Thus, Plaintiff is a qualified and suitable attorney to also serve as class counsel. Should the Court require same as a condition to class certification, Plaintiff is prepared to identify a suitable alternative class representative.

34. This suit may be maintained as a class action because Defendant has acted, and/or have refused to act, on grounds generally applicable to the Class, thereby making final relief appropriate.

35. Plaintiff does not presently seek injunctive relief.

36. **Superiority:** In addition, this suit may be maintained as a class action because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The

claims asserted herein are applicable to all consumers throughout the United States who purchased Flu Relief. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually effectively and cost-efficiently to redress Defendant's wrongful conduct. Individual litigation would enhance delay and expense to all parties. The class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I

37. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

38. Defendant's conduct constitutes an unconscionable commercial practice in violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-2*.

39. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands

judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT II

40. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

41. Defendant's conduct constitutes deception in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

42. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT III

43. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

44. Defendant's conduct constitutes fraud in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

45. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT IV

46. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

47. Defendant's conduct constitutes false pretense, false promise and/or misrepresentation, in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

48. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT V

49. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

50. Defendant's conduct constitutes knowing concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of any merchandise in violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-2*.

51. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A. 56:8-19*, and any other and further relief as the Court deems just and proper.

COUNT VI

52. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

53. Defendant, in the advertisement, marketing and sale of the Product, deliberately engaged in deception, false pretense, false promise and/or

misrepresentation with respect to material facts, and did so with the intent that others, including members of the plaintiff-class, rely upon same, and, upon information and belief, members of the class did justifiably rely upon same to their detriment.

54. Defendant, in the advertisement, marketing and sale of the Product, deliberately and knowingly engaged in concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon same, and, upon information and belief, members of the class did justifiably rely upon same to their detriment.

55. As a proximate result of Defendant's conduct, members of the class were damaged.

56. Defendant's conduct constitutes common law fraud.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for damages in an amount to be proven at trial, as well as punitive damages, together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

JURY DEMAND

Demand is hereby made for trial by jury as to all issues.


TRIAL COUNSEL DESIGNATION

Pursuant to Rule 4:25-4, the Court is respectfully advised that Harold M. Hoffman, Esq., is hereby designated as trial counsel in behalf of plaintiff.

CERTIFICATION PURSUANT TO RULE 4:5-1

Harold M. Hoffman, counsel for plaintiff, hereby certifies that the matter in controversy is not the subject of any other known pending action in this or any other Court or any pending arbitration, nor is any other action or arbitration known to be contemplated. At this time, no other known party, other than members of the class, are anticipated for joinder.

I certify that the foregoing is true to the best of my knowledge. I am aware that if any of the foregoing is wilfully false, I am subject to punishment.


HAROLD M. HOFFMAN, ESQ.

Dated: May 01, 2017