

## Carbolic smoke ball: fake or cure?

**CARBOLIC SMOKE BALL**  
WILL POSITIVELY CURE

COLD IN THE HEAD.	COUGHS, CATARRH.	HOARSENESS, LOSS OF VOICE.	THROAT DEAFNESS.	INFLUENZA, HAY FEVER.	CROUP, WHOOPING COUGH.
COLD ON THE CHEST.	ASTHMA, BRONCHITIS.	SORE THROAT,	SORE EYES,	HEADACHE,	NEURALGIA.

As all the Diseases mentioned above proceed from one cause, they can be Cured by this Remedy.

**£100 REWARD**  
WILL BE PAID BY THE  
**CARBOLIC SMOKE BALL CO.**  
to any Person who contracts the foregoing Epidemic,  
**INFLUENZA,**  
by taking Cold, after having used the **CARBOLIC SMOKE BALL** according to the printed directions applied with each Ball.

**£1000 IS DEPOSITED**  
with the ALLIANCE BANK, Regent Street, showing our sincerity in the matter.

During the last outbreak of **INFLUENZA** many Honoured **CARBOLIC SMOKE BALLS** were sold in great numbers against the disease, and in an unbroken manner the disease contracted by those using the **CARBOLIC SMOKE BALLS**.

*See and this  
is the only one  
which you can  
rely on to  
get rid of  
your  
Cough*

Source: BBC website, 06 November 2009

The curious case of the carbolic smoke ball forced companies to treat customers honestly and openly and still has impact today.

The 1892 case of Carlill and the Carbolic Smoke Ball Company is an odd tale set against the backdrop of the swirling mists and fog of Victorian London, a terrifying Russian flu pandemic, and a forest of unregulated quack medicines offering cures for just about everything.

It is a case known to legal students the world over. It is also seen by some as the birth of modern consumer protection – as it helped to define in law the trading relationship between a company and its customers.

The carbolic smoke ball was a peculiar device marketed as a cure for various ailments including influenza. It consisted of a rubber ball, filled with powdered carbolic acid. You squeezed the ball sending a puff of acidic smoke right up a tube inserted into your nose. The idea was that your nose would run and the cold would be flushed out.

### Cash or cure

The company making the ball advertised it in the Pall Mall Gazette offering a £100 reward to anyone using it correctly who then contracted influenza. They deposited £1,000 in the Alliance Bank in Regent Street to show the money was there.

The advert also contained testimonials from a raft of aristocrats and clergy – the Victorian equivalent to today's celebrity endorsement.

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It was seen by one Mrs Louisa Elizabeth Carlill. She bought a ball and used it, as directed, three times daily for nearly two months, then promptly caught the flu. Not surprisingly she claimed her reward from the company.

The manufacturers ignored two letters from her husband who had trained as a solicitor. They finally replied saying that if used properly they had total confidence in their product.

In order to protect themselves against a fraudulent claim that stated Mrs Carlill would have to attend their offices at 27 Princess Street, Hanover Square, London each day and have her use of the ball checked by their secretary.

Mrs Carlill sued, claiming there was a contract between her and the company. The company denied there was one. She won her case in the High Court.

### Legal defence

The company and its proprietor, Mr Frederick Rowe, appealed. They raised almost every conceivable reason why there was no contract between themselves and Mrs Carlill. Among their arguments were the following::

First, they said the advert was 'mere puff', like a modern toothpaste which claims to leave your teeth 'whiter than white'. Claims like these are not meant to have any legal consequences and are understood not to by the public. The company failed largely because that had deposited £1,000 to show that they were serious.

Second, they maintained there was no way of knowing whether Mrs Carlill had followed the instructions correctly. That would have been a good argument had the court not simply dismissed it out of hand.

Next they said an offer could not be understood to have been made to the entire world

Again the court disagreed. It said that if the offer was clear and to a group, anyone fulfilling the terms could be deemed to have accepted it.

There was no need for those accepting to say who they were when they accepted the offer.

One of the judges, Lord Bowen, put it like this: "If I advertise to the world that my dog is lost, and that anybody who brings the dog to a particular place will be paid some money, are all the police or other persons whose business it is to find lost dogs to be expected to sit down and write me a note saying that they have accepted my proposal?"

The company also argued there was no 'consideration' or 'thing of value' passing between Mrs Carlill and themselves. To be valid all contracts must have consideration. The court decided any use of the smoke ball would be likely to promote sales, and would thus be of value to the company. Mrs Carlill's use of the smoke ball was therefore deemed to be good or 'valuable' consideration.

### Hoover's 'free flights'

Mrs Carlill won the appeal, and so significantly helped to define the relationship between companies, their products and their customers. However, it was not until the Thalidomide scandal in 1961, which led to the Medicines Act of 1968 and the Trade Descriptions Act of the same year, that there was a clear statutory improvement in consumer rights.

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The carbolic smoke ball case helped ordinary people to fight big companies.

In 1992, Hoover came unstuck when it offered free flights – initially to Europe and then to the United States – if they bought over £100 worth of its appliances. Thousands of people took up the offer.

The company simply could not keep up with demand. Customers claimed Hoover was not keeping its promises. Hoover found itself fighting legal battles up and down the country and ended up losing nearly £50 million. It was one of the biggest marketing disasters of all time.

And what of Mrs Carlill who set the consumer rights ball rolling? She died on 10<sup>th</sup> March 1942 at the age of 96. Clearly her considerable age contributed to her death. But on the death certificate, there was only one cause stated: Influenza.