

4 March 2011

Jean-Marc Duvoisin
Deputy Executive Vice President
Nestlé S.A.
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Switzerland



Baby Milk Action is a non-profit organisation which aims to save lives and protect infant and young child health through independent controls on babyfood marketing.

We are a member of the International Baby Food Action Network (IBFAN), a network of over 200 citizens groups in more than 100 countries.

www.babymilkaction.org

www.ibfan.org

Dear Mr. Duvoisin,

**Nestlé's continued violations of the
World Health Assembly baby food marketing requirements,
UN Global Compact Principles and
OECD Guidelines for Multinational Enterprises**

I wrote to you as the person responsible for the WHO Code Ombudsman System regarding systematic violations of the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly by the Nestlé company, that are directed and defended by Nestlé executives. Examples of additional widespread Resolutions are given in the report *Breaking the Rules, Stretching the Rules 2010* published since my earlier letter.

In your response of 19 October 2010 you indicated that rather than investigating our complaints, you were forwarding our letter to one of the executives who was the subject of the complaint, Dr. Crozier-Willi.

Although, as stated, we had already copied the letter to Dr. Crozier-Willi ourselves, we find it shocking that Nestlé's so-called Ombudsman simply asks the subject of the complaint to provide the response. I note your explanation that, in reality, Nestlé has no system in place for investigating complaints such as ours independently of the managers who perpetrate them.

You state that your role is to investigate internal complaints. Can you confirm whether there have been investigations of any complaints relating to the issues we have raised or any similar to the examples given in the *Breaking the Rules* reports? These are clear violations of the *International Code* and Resolutions and if no complaints have been registered with you, this would suggest that the internal system is not working. Either staff have been misled regarding the provisions of these measures by their managers, or perhaps they fear that you will simply forward their complaints to the managers responsible, as you did with my letter.

If reports of violations have been registered with you, I would be grateful if you could provide information on their scope and on any action taken (obviously protecting the confidentiality of those making the complaints). I would also be grateful if you could give your opinion on why it is that systematic violations continue regardless of any action you may have taken.

Dr. Crozier-Willi did respond to me directly in a letter dated 2 November 2010. Aside from repeating past assertions, she has made various admissions and other comments that I would like to draw to your attention and to the attention of the UN Global Compact Office and Swiss National Contact Point for the OECD Guidelines, to whom I am copying this letter.

I am also copying the letter to Nestlé's Chief Executive Officer and ask, once again, that action be taken to stop these violations. Responses such as the latest from Dr. Crozier-Willi only serve to bring Nestlé further into disrepute, while exposing the failings of Nestlé's WHO Code Ombudsman System, the *Creating Shared Value* public relations exercise and Nestlé's stated compliance with *UN Global Compact Principles* and *OECD Guidelines*.

Nestlé's 'Protect' logos, claims and promotion are prohibited - Nestlé avoids this issue

Dr. Crozier-Willi attempts to confuse the issue of making claims on labels and in marketing materials with whether the ingredients should be added to formula. These are separate issues. Baby Milk Action takes the view that any ingredient found to be necessary and safe for developing infants should be included in all formulas as a requirement, but this should not be used for marketing purposes.

Nestlé strategies such as the 'protect' logos, formula slogans such as *'Start healthy, Stay healthy'* and claims such as *"Strengthening the immune defenses and reducing the incidence of diarrhea in the crucial first year of life"* are prohibited. Article 9.2 of the Code is clear that claims are prohibited on labels. Article 7.2 is clear that information for health workers should be restricted to scientific and factual matters. Of course, there should also be no promotion to parents under Article 5.1, nor strategies targeting pregnant women and mothers of infant and young children (such as Nestlé's baby clubs) under Article 5.5.

Marketing slogans such as *'The new "Gold Standard" in infant nutrition'* are also prohibited. Dr. Crozier-Willi did attempt to suggest this *"referred to the Gold colour of the labels"* but clearly found it too embarrassing to defend the claim as she also said the leaflets we exposed *"has been discontinued"* after the company received thousands of emails from members of the public calling on it to respect the Code and Resolutions.

While it is welcome that this one leaflet has been discontinued, we repeat our call for an immediate undertaking to remove the 'protect' logos and stop all prohibited marketing activities, including the types exposed in the *Breaking the Rules* reports.

"No proven benefit" from ingredients highlighted in the marketing campaign

Claims should not be made regarding ingredients, a point reiterated by the World Health Assembly in May 2010 in Resolution 63.23. The 'protect' logos highlight ingredients such as DHA and ARA. In her letter of 2 November 2010, Dr. Crozier-Willi finally acknowledged the independent systematic reviews conducted by the Cochrane Library, which have found *"no proven benefit"* from adding such ingredients to formula.

Dr. Crozier-Willi suggests: *"Contrary to what is suggested in your letter, we do not make any claim on the products labels that contradicts the Cochrane Library's reviews. Our statement is that DHA and ARA are 'two special fatty acids found in breast milk, which are important to your baby's defence system, and contribute to the development of brain and vision'"*

It is simply ridiculous of Nestlé to suggest the logos and marketing campaigns are promoting the benefits of breastmilk. The logos appear on formula labels. The promotional materials are for the formulas.

Nestlé misrepresents studies and reports - and fails to warn parents of risks

While accepting "no proven benefit" from the ingredients on which Nestlé bases its marketing campaigns, Dr. Crozier-Willi refers to a paper: *The roles of long-chain polyunsaturated fatty acids in pregnancy, lactation and infancy: review of current knowledge and consensus recommendations.*

This paper gives recommendations arising from a scientific workshop and states: *"For healthy term infants, we recommend and fully endorse breastfeeding, which supplies preformed LC-PUFA, as the preferred method of feeding. When breastfeeding is not possible, we recommend use of an infant formula providing DHA at levels between 0.2 and 0.5 weight percent of total fat, and with the minimum amount of AA equivalent to the contents of DHA."*

This paper is used by Nestlé to justify highlighting the addition of the ingredients in its 'protect' logos, even though there is "no proven benefit". However, it is disingenuous of Nestlé not to mention that: *"The scientific workshop held at Barcelona was financially supported by Martek Biosciences Corporation."*

Martek manufactures DHA and ARA using microalgae fermentation specifically for adding to formula. So Martek funded the review recommending its products are added to formula - this is a clear conflict of interest. The paper also notes that the lead author is recipient of a *"Freedom to Discover Award of the Bristol Myers Squibb Foundation"*, a formula manufacturer at the time.

Dr. Crozier-Willi also suggests, *"A number of important international organisations and experts recommend that DHA and ARA be added to infant formula. These include the Food and Agriculture Organization (FAO), the World Health Organization (WHO)..."*

The same claim is made on the website of the Infant Formula Council page relating to DHA and ARA additions to formula. Nestlé is a member of the Infant Formula Council. The report referenced to support the claim that FAO and WHO *'recommend that DHA and ARA be added to infant formula'* is *Fats and oils in human nutrition* dating from 1993.

Firstly, this states: *"In view of the evidence, education and health care programmes should actively promote breast feeding."* Such initiatives are undermined by Nestlé's marketing strategies claiming its formula 'protects' babies.

Secondly, the report acknowledges that the evidence of supposed benefits from Long Chain Polyunsaturated Fatty Acids to babies who are not breastfed relates to premature babies and states that there is, *"not yet evidence from controlled, randomized trials in term infants..."*

I also note that the (2008) FAO/WHO study, *Interim Summary of Conclusions and Dietary Recommendations on Total Fat & Fatty Acids* simply recommends intakes for DHA/ARA based on levels found in breastmilk, and makes no recommendation at all about formula. Similarly, the FAO/WHO Codex Standard on infant formulas lists DHA/ARA only as "optional" ingredients in formula – and does not recommend them. Even if there was a

recommendation to add DHA/ARA to formula, this does not justify violating Article 9.2 of the *International Code* and other provisions of World Health Assembly Resolutions.

While there is 'no proven benefit' from adding DHA and ARA to formula for term infants, there are acknowledged risks. The US Food and Drug Administration claimed in its response of 17 May 2001 to Martek's application GRN 000041 that:

"Some studies have reported unexpected deaths among infants who consumed formula supplemented with long-chain polyunsaturated fatty acids. These unexpected deaths were attributed to Sudden Infant Death Syndrome (SIDS), sepsis or necrotizing enterocolitis. Also, some studies have reported adverse events and other morbidities including diarrhea, flatulence, jaundice, and apnea in infants fed long-chain polyunsaturated fatty acids."

Companies have been required to monitor any adverse effects to formula containing LCPUFAs. In 2008 it was revealed that the FDA had recorded 98 cases of adverse reactions to formula containing LCPUFAs.

While Nestlé and the Infant Formula Council cite the 1993 report from FAO and WHO, there are more recent studies suggesting possible adverse effects, including from one of the researchers cited in the 1993 report, Alan Lucas, who was one of the authors of the 2010 paper (Arch Dis Child 2010;95:588-595 doi:10.1136/adc.2009.167270): *The 10-year follow-up of a randomised trial of long-chain polyunsaturated fatty acid supplementation in preterm infants: effects on growth and blood pressure.*

This concluded: *"Girls born preterm and randomised to LCPUFA-supplemented formula showed increased weight, adiposity and BP at 9–11 years, which might have adverse consequences for later health. No effects were seen in boys. Long-term follow-up of other LCPUFA supplementation trials is required to further investigate this finding."*

Rather than basing a global marketing campaign on these ingredients claiming they 'protect' babies and implying that formula containing them will build the immune system and aid brain and eye development, Nestlé would perhaps be better advised to warn parents to look for possible adverse effects, to stop using the formula if should these occur and to report problems to the health authorities.

Nestlé still refuses to warn that powdered infant formula is not sterile

We are also concerned that Nestlé continues to refuse to warn on labels that powdered infant formula is not sterile and the steps required to reduce the risk of possible contamination with harmful bacteria. Despite Dr. Crozier-Willi's assertions about Nestlé warnings and instructions in her latest letter, it is a simple matter of fact that warnings and instructions are not in line with the *WHO Guidelines for the safe preparation, handling and storage of powdered infant formula*, available at:
<http://www.who.int/foodsafety/publications/micro/pif2007/en/index.html>

It should not be forgotten that Nestlé had to recall formula from across Europe in 2003 after the death of a 5-day-old child in Belgium was attributed to such contamination.

Perhaps Nestlé can explain why it believes it is correct to disregard the *WHO Guidelines* and keep important safety information from parents and carers?

As you, as Ombudsman, have said it is not your role to investigate these issues, I would welcome a response from anyone on the circulation list indicating action will be taken.

Yours sincerely,

Mike Brady
Campaigns and Networking Coordinator
Baby Milk Action

CC (by email): UK and Swiss NCP for the OECD Guidelines for Multinational Enterprises
UN Global Compact Office
Dr. Gayle Crozier-Willi
Mr. Paul Bulcke