

UK formula marketing practices

March 2009

HARD SELL FORMULA

Strategies used by the UK formula industry

START before they are born...

PUSH in supermarkets....

IDEALISE products..



OFFER gifts....

ADVERTISE....

CO-OPT health workers....



UN Committee on the Rights of the Child Report on the UK - October 2008

“The Committee, while appreciating the progress made in recent years in the promotion and support of breastfeeding in the State party, is concerned that implementation of the International Code of Marketing of Breastmilk Substitutes continues to be inadequate and that aggressive promotion of breastmilk substitutes remains common. The Committee recommends that the State party implement fully the International Code of Marketing of Breastmilk Substitutes.”

**Prepared by Baby Milk Action
on behalf of BFLG, a coalition of
22 health worker organisations
and mother support groups**

The BFLG monitoring project

The Baby Feeding Law Group provides information and training to health workers and members of the public on how to monitor baby food marketing practices against international standards and UK legislation.

Monitoring results appear in this and other BFLG reports such as *Look What They're Doing in the UK*, *Hard Sell Formula* and *Protecting breastfeeding - Protecting babies fed on formula*.

The project began with the help of a grant from the King's Fund and is currently funded, at a low level, by donations from members of the public.



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BFLG Member organisations

Association of Breastfeeding Mothers (ABM)

Association for Improvements in the Maternity Services (AIMS)

Association of Radical Midwives (ARM)

Baby Milk Action (BFLG secretariat)

Best Beginnings

Breastfeeding Community

Breastfeeding Network (BfN)

Community Practitioners and Health Visitors Association (CPHVA)

Caroline Walker Trust

Food Commission

Lactation Consultants Great Britain (LCGB)

La Leche League Great Britain (LLLGB)

Little Angels

Midwives Information and Resource Service (MIDIRS)

National Childbirth Trust (NCT)

Royal College of Nursing (RCN)

Royal College of Midwives (RCM)

Royal College of Paediatrics and Child Health (RCPCH)

The Baby Café

UK Association for Milk Banking (U.K.A.M.B)

UNICEF UK Baby Friendly Initiative (BFI)

UNISON

Women's Environmental Network (WEN)



BFLG
Baby Feeding Law Group
Strengthening UK baby food laws

breastfeeding
manifesto
coalition

Failure to act on aggressive marketing constitutes violation of child rights

BFLG monitoring reports

The Baby Feeding Law Group has produced a series of monitoring reports, pictured below, based on its on-going monitoring project.

The last two reports profiled each of the main UK companies in turn, an arrangement intended to assist the Home Authorities responsible for ensuring compliance. This report provides an update, but is arranged by theme as an assistance to the UK Government's Independent Review Panel (IRP) which was convened by the Food Standards Agency to evaluate the effectiveness of the UK Regulations. It is an update on the *Hard Sell Formula* briefing produced in 2007. This update and past reports have been sent to the IRP.

The UK Regulations were revised in 2007, but did not respond to the call by BFLG members and other health advocates to bring these into line with the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly.

UN Committee on the Rights of the Child calls for action to implement the marketing requirements

Implementation of the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly is seen as necessary under Article 24 of the *Convention on the Rights of the Child (CRC)*. In 2008 the UN Committee on the Rights of the Child analysed government and civil society submissions on the state of compliance with the CRC. The UN Committee on the Rights of the Child concluded in its report, issued in October 2008, (paragraphs 58 and 59):

The Committee, while appreciating the progress made in recent years in the promotion and support of breastfeeding in the State party, is concerned that implementation of the International Code of Marketing of Breastmilk Substitutes continues to be inadequate and that aggressive promotion of breastmilk substitutes remains common [emphasis added]. The Committee recommends that the State party implement fully the International Code of Marketing of Breastmilk Substitutes. The State party should also further promote baby-friendly hospitals and encourage that breastfeeding is included in nursery training.

For detailed analysis of the Regulations, what is required to bring them into line and the possible health and economic benefits of doing so, see the BFLG report *Protecting breastfeeding - Protecting babies fed on formula*, which was submitted to the FSA consultation on the Regulations.

Lack of action on past reports

The May and August 2008 reports were sent to LACORS and the Trading Standards Home Authorities as an agreed way to raise concerns. At the time of writing responses have been received from just three Home Authorities (responsible for Heinz, Nestlé and Wyeth/SMA). The Advertising Standards Authority also responded to the report.

The responses from the authorities are given in the Appendix 1 along with tables of past and new cases of perceived breaches of the regulations and show that enforcement officers feel there is little they can do. They suggest the promotions are outside the scope of the law or test cases are needed to define the law, but nobody appears to be willing to bring them. The Guidance Notes, presented by the Government as addressing some of the issues not covered by the law, are seen as unenforceable because they go beyond the law.

In the consultation in 2007 the Baby Feeding Law Group called for regulations that would protect breastfeeding and protect babies fed on formula. The regulations introduced are not doing this and need to be revised.

Follow-on milk claims - adding to the confusion

The European Food Safety Authority (EFSA) is currently evaluating applications for claims which could appear on the labels of follow-on formulas - but not on infant formulas. Appendix 2 contains a comment regarding the impact the lax rules on follow-on formula might have on parent's perception of these products as compared to breastmilk or infant formula.



Start before they are born

Baby food companies go to great lengths to get mothers onto their databases using promotion branded with the name of their formulas. They want to be seen as the source of information on infant care.



Aptamil advert in *Prima Baby and Pregnancy* Dec 08

Companies advertise on television, newspapers and in parenting, fashion and celebrity magazines to encourage pregnant women to sign up to receive company information. They offer inducements, such as cuddly toys, children's clothes and money (for example, vouchers worth £90). Such strategies seem to be unregulated. For example, in response to the **August 2008** monitoring report Trading Standards stated: "A leaflet encouraging women to contact the SMA Baby Club is not in breach of the Regulations."

Aptamil (owned by Danone) advertised in *Prima Baby and Pregnancy* in **December 08** (left), encouraging mothers to join the **Aptamil Baby Club** to receive information and gifts, to visit the company website (where all **Aptamil** formulas are promoted) and to call the **Aptamil** telephone 'careline'. The term 'healthy start' is used - the name for a National Health Service scheme. This

is unlikely to be a coincidence given the expense that goes into preparing these messages. See also **Aptamil** advert (left) in *Observer Woman*, **March 2009**.



Observer Woman, March 2009.

Cow & Gate (another Danone brand) was also advertised in the **December 2008** edition of *Prima Baby and Pregnancy* (see right) offering pregnant women a free cuddly toy, money-off vouchers and a pregnancy diary. By targeting pregnant women, **Danone**, is clearly aiming for sales of formulas used from birth and it is disingenuous to argue otherwise. However, as infant formula is only mentioned on the website, and in the materials sent after signing up, no action is taken under the current regulations and *Guidance Notes*.



Formula brand promotion in birth registries

Cow and Gate and **Hipp** branded materials are included in packs provided by birth registries in several counties (an initiative of **Lifecycle Management Ltd.**). In addition to promoting baby clubs etc. the Cow & Gate pamphlet includes postcards to send to friends and family, branded with Cow & Gate. Hipp's baby diary was exposed in 2007 but no action

has been taken. Some Primary Care Trusts have taken this up directly with birth registries with some success.



Companies also seek to target new mothers through **Bounty Packs**, provided by some hospitals and through retailers such as **Boots**. Promotions by **Hipp** were reported in **October 2008**. **Bounty** has previously highlighted the benefits of promotion through its pack and associated website (see box on the right).

In **December 2008** it was reported in the marketing press that **Hipp** has appointed the company **Spinnaker** for its direct marketing campaigns, an indication that the new regulations and Guidance Notes have done nothing to deter this approach (*Marketing Week 17 December 2008*).



BFLG has previously exposed how a mother received direct mail from **Cow & Gate** with the message: *"I'm thinking of getting a t-shirt made: Danger! Sore Boobs!"* She suspects the company received

her contact details via **Bounty**. So shocking is the lack of controls on such marketing in the UK that this case was highlighted in the global monitoring report produced by the **International Code Documentation Centre** in **November 2007**.

The advertisement (see right) from **Wyeth** appeared in the celebrity magazine **Closer** (31 Jan - 6 Feb 2009). It targets pregnant women with the headline: *"Our free DVD will get you through the first 48 hours."* It is branded with the **SMA** formula logo (a stylised breastfeeding woman) and directs people to the site where the full range of formulas are promoted. As it targets pregnant women, its target audience would look to the infant formula, making this a de facto infant formula advertisement. However, such arguments have failed to convince the authorities.



Another favoured method is using advertisements showing a follow-on formula similarly packaged to the range of formulas to promote the brand name. A **Cow & Gate** advertisement in *Prima Baby and Parenting* magazine is part of a multi-media campaign on television and the internet using health claims and encouraging the public to visit the company site and call the 'careline'. The **Advertising Standards Authority** rejected complaints about the television advertisement because the product pictured is follow-on formula and the babies are over 6 months of age (see appendices). However, the claims are idealising and misleading for all formula. In response to the August 2008 report the **ASA** said: *"it should be noted that it is not a breach of the Advertising Codes to include website information."*

Bounty explains how promotion of foods for older children promotes the full formula range

Hipp Organic Target Mums Through Bounty.com

HiPP Organic targeted expectant mums and mums with children at toddler age through an online campaign.

Taking an integrated approach, their objective was to engage expectant and new mums through an educational campaign.

Objectives

HiPP Organic wanted to target mums-to-be and mums with toddlers with a view to increasing awareness of the HiPP brand and the benefits of eating organically during pregnancy and for feeding toddlers on organic food.

Therefore, they were keen to tie up with websites that catered for these demographics.

HiPP were also keen to drive traffic to the HiPP website in order to increase awareness and understanding of the full product range, including the HiPP Organic milks range.

Case study given at: www.bountybusiness.com/case_studies/retail/hipp-organic-on-bounty.com.aspx



Labelling - prohibited claims and images

Companies cannot make health claims on labels or use idealizing images - but they do

Companies have updated their labels several times since the 1995 version of the Regulations, but each time included text and images prohibited by the Regulations. Only claims cited in the 1995 Regulations and Annex IV of the Directive EC/141/2006 are permitted. The industry took the UK Government to court to delay the labelling provisions in the 2007 Regulation from coming into force until 2010 and so the 1995 provisions remain in force. All the same, all companies have updated their labels in 2008 but none of them have complied with the provisions, in the view of the Baby Feeding Law Group.

Heinz changed the name of its *Farley's* brand to the idealizing *Nurture* and used almost identical packaging to make the formulas cross-promotional - a way to exploit the fact that follow-on formula advertising is permitted. An advertising campaign claimed that the formula 'protects', but in reality infants fed on it are more likely to become ill compared to the norm of a breastfed child.



The **Hillingdon Home Authority** for Heinz raised 'as a priority' its use of the claim that its formula contains prebiotics (see appendices). The Authority stated its: "advice was that this clearly did not comply. Heinz had advised that the use of prebiotics is consistent with the legislation as implemented and enforced in the UK, because prebiotics are listed in Annex IV albeit in more technical language. Notwithstanding this, following a recent meeting with the FSA, a decision was made by Heinz to remove this claim."



Other companies, notably **Danone**, continue to use the non-compliant prebiotic claim as on the **Aptamil** label shown left, which also uses the made-up word *ImmunoFortis* for an ingredient, implying that the product will strengthen the immune system. This impression is reinforced by the image of a shield and television advertising showing a protective glow around children fed on it. Again, this ignore the fact that children are more likely to become ill if formula fed. The label draws equivalence to breastmilk with the claim "inspired by breastmilk" (which the ASA permits in advertising) and has an idealising (and unnecessary) polar bear image.

Wyeth's use of claims and the response of its **Buckingham Home Authority** (see appendices) demonstrates how the Regulations and Guidance Notes appear to be unenforceable without a test case, which no authority seems prepared to bring.

In 2006 **Wyeth** was reminded by the **Food Standards Agency** that its 'closer to breastmilk' claim was non-compliant. Its response was to remove the claim and to change its logo to be a stylised breastfeeding mother. This was widely criticised by mothers and health workers when it was launched, but the Home Authority said: "I have done several straw polls and some people simply see an M and not a breast feeding mother. If there is reasonable doubt, a prosecution would not succeed." The obvious question is why did not Wyeth use an 'M' if that was its intention?



The Authority did raise concerns over the claim 'new improved protein balance' on labels, which is not on the permitted list. Following the August 2008 BFLG report it stated: "SMA has changed its labels and removed the references to protein balance. Easily digested' is a claim under discussion."

Point-of-sale promotion

Promotion in retail outlets has arguably increased under the new Regulations as companies promote their newly packaged formulas



The requirement in the **Guidance Notes** that infant formula and follow-on formula should be placed in separate areas in retail outlets appears to be universally ignored.

Edge-of-shelf advertising for **Aptamil** infant formula in **Waitrose** (Left) in **March 2009**. The formula pictured on the label is follow-on formula as a way to exploit the loophole allowing this to be advertised, but the colouring and the placement promote the infant formula.

The Home Authority for **Danone** (owner of the **Aptamil** brand) has not responded to past reports, but the **Wyeth Home Authority, Buckingham**, has, suggesting that the **Guidance Notes** are unenforceable in this area. Referring to the shelf talkers placed with infant formula in **Morrison's** exposed in the **May 2008** monitoring report, Buckingham HA said: "It may not comply with good practice in the **Guidance Notes**, but it does not infringe the **2007 Regulations**. Therefore enforcement action cannot be taken." The practice continues, as in this **Somerfield** price match promotion with **Wyeth SMA** infant formula in **January 2009**, shown right.



Tesco promoted the new **Heinz Nurture** infant formula with the shelf talkers (left) in **August 2008**. **Heinz' Hillingdon Home Authority** questioned a promotion shown in the **August 2008** report, stating: "As a consequence consumers may be drawn to the new infant formulas. This was contrary to **Guidance Note 53**. In summary I am advised that **Heinz** have little control over how retailers

display and merchandise infant formulae in their stores."



SPECIAL DISPLAYS, exposed in previous monitoring reports, continue to be reported. The example (above right) is from **Savers** in **Sudbury**. Not only was **Cow & Gate** infant formula and follow-on formula on special display, packs had reduced price stickers on them. **Local Trading Standards** were informed. **IN-STORE LEAFLETS** and **MAGAZINES** promote brands names: (left) an

'advertising feature' for **Heinz Nurture** in the free **ASDA** magazine, **August 2008**. **WEBSITES** also cause concern.

The **Boots** website (right) on **19 March 2009** gave links for **Hipp** infant formula and an **Philip's Avent** breastpump saying: "Breastfeeding: this can be tough so let us help you out."



Co-opt health workers to promote brands

Companies target health workers with training events and offer free gifts. In return they request information on their wards and provide leaflets and other materials for passing on to mothers.



Companies target health workers with advertising and gifts.

In November 2008 the British Journal of Midwifery included a calendar shown Left,



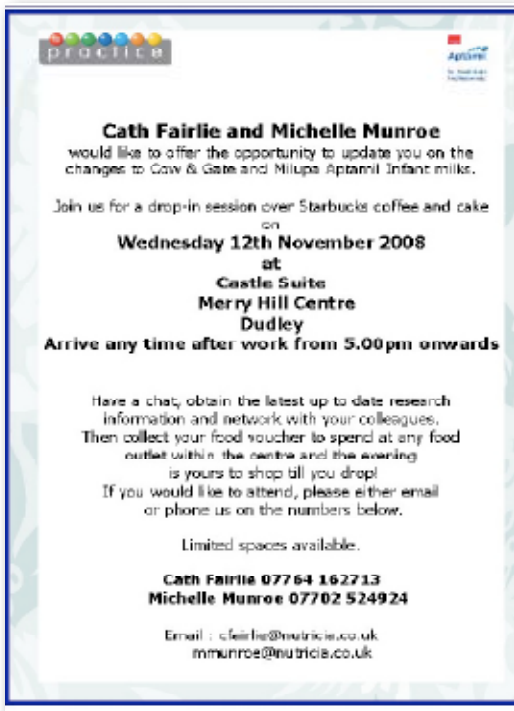
branded on every page with the *Aptamil* formula name and claims about the infant formula, encouraging health workers to contact the company for information. Unlike other journals, this publication is sold in the high street newsagent **WH Smiths** and so should be subject to the Regulations regarding advertising to the public. The **British Journal of Midwifery** also carried the advert (above right) which presents *Aptamil* formula as superior to **Heinz Nurture**, **SMA Gold** and **Hipp** brands. The journal also ran an article in 2006 appealing to midwives to accept sponsorship from **Nestlé** for materials to use on wards. **Nestlé** is widely boycotted due to its harmful promotional practices globally and has for some time been attempting to break into the UK formula market.



Danone advertised the *Aptamil* brand in the *Royal College of Midwives Journal* in October 2008 (right). This promotes **IMMUNOFORTIS** Prebiotics as helping to prevent allergies such as atopic dermatitis, despite the fact that these claims are not on the permitted list (and **Heinz** has recently been told to remove its prebiotics claim from labels). The **Cochrane Library** systematic review of prebiotics claims states: "There is insufficient evidence to recommend the addition of prebiotics to infant feeds for prevention of allergic disease or food reactions." (1) One Primary Care Trust that set up a committee to review company claims before distributing company materials to health workers invited representatives to attend to provide scientific substantiation and found them reluctant to do so.

A **Cow & Gate** branded advertisement (right), also making claims about prebiotics ran in *Community Practitioner* in December 2008. It has been suggested in past reports that the **Advertising Standard Authority** refuses to investigate such advertising. The **ASA** has responded (see appendices): "The **ASA** is not able to set its own remit and our remit simply does not extend to health-related claims in marketing communications addressed to the medical, dental, veterinary and allied professions. I would suggest that the best course of action in these cases may be to forward your concerns to **Trading Standards** or the **FSA**." These reports inform **Trading Standards** and the **FSA** of the **BFLG**'s concerns and we have responded to a request to provide scans of some of the advertisements. Although no cases have been





taken up, Trading Standards has said regarding company advertising (with regard to **Wyeth SMA** advertising - see appendices): "We have legal powers under the Food Safety Act 1990 to require them to produce evidence if we have reason to believe an offence has been committed." It added: "There is no legal obligation for a manufacturer to supply evidence to health workers."

Many hospitals have a designated contact to meet with company representatives so that the suitability of materials can be checked and to prevent representatives giving inducements to staff. However, it is reported that companies try to circumvent this procedure by inviting staff to attend off-site meetings, sometimes with refreshments provided. Representatives sometimes argue that this is to help health workers fulfill their requirement to keep updated under the **Nursing and Midwifery Council (NMC) Code of Conduct**.

The invitation (left) is an example from **Danone**, which has services targeting health workers under the **Cow & Gate** and **Aptamil** brands. It was distributed on the health service email system by a health worker close to the company representatives, possibly in breach of health service policy.

The Trust in this region holds its own forums where product information is provided, but companies are not allowed to provide gifts. At the event health workers were given a branded bag of promotional materials and gifts, refreshments from **Starbucks** and a £10 food voucher, encouraging them to walk to the food hall with the bags. The bag included a circular weight convertor (converting imperial into kg), an item which is likely to be used in the presence of parents, and which displays prominent and disputed claims such as "Cow & Gate infant formula helps brain and eye development", "has prebiotic oligosaccharides which help support the natural immune system," and, on the front, "the key pieces to complete a picture of health."

The pack also included a guide on preparing a feeding bottle which is not in line with the guidance to parents as specified in the **Guidance Notes**. The **Cow & Gate** guide fails to state that powdered infant formula is not sterile and that water over 70 deg C should be used (or boiled water that has cooled for no more than 30 minutes). Instead it recommends allowing water to cool for 30 minutes, which is likely to be taken as the minimum rather than maximum cooling time.



Bounty provides promotional packs to mothers in hospitals on behalf of a range of infant care companies. It offers payments to health workers for completing questionnaires and provides them with tailored packs. The example (left) from **March 2009** included a promotional pamphlet from **Mead Johnson** which attempts to medicalise normal feeding conditions such as possetting, suggesting they need specialised formulas. (See **Protecting breastfeeding - Protecting babies fed on formula**, the BFLG submission to the consultation on the 2007 Regulations, for more on this). **Mead Johnson** encourages health workers to order its branded leaflets to pass on to parents.

Appendix 1a: Responses to past reports from enforcement authorities

BFLG monitoring reports

Past reports have been provided to Trading Standards home authorities, the Advertising Standards Authority, the Food Standards Agency and the Independent Review Panel. Responses received regarding the August 2008 report are given here in their entirety. The Baby Feeding Law Group has produced a series of monitoring reports based on its on-going monitoring project.

The last two reports profiled each of the main UK companies in turn, an arrangement intended to assist the home authorities responsible for ensuring compliance. This report provides an update, but is arranged by theme as an assistance to the government panel reviewing the law. It is an update on the Hard Sell Formula briefing produced in 2007.

This update and past reports have been sent to a review panel convened by the Food Standards Agency to evaluate the effectiveness of the Regulations. These were revised in 2007, but did not respond to the call by BFLG members and other health advocates to bring these into line with the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly.

Heinz rejects authority's opinions

As shown in the August 2008 report, Heinz has launched a 'new' formula, branded with the idealizing name 'nurture'. Labels and advertising contained non-compliant claims. There was also a concerted promotional campaign in most supermarket chains for the formula.

Hillingdon Environmental and Consumer Protection service took up these issues with Heinz, which rejected any suggestion that it was non-compliant and, apparently, has only agreed to act on its 'Prebiotic' claim and formula preparation instructions. Hillingdon's full response is as follows:

I am now able to update you on the current position in relation to the matters raised in your round up report in August. I am addressing only the matters in relation to the new Nurture range of products for obvious reasons.

Prebiotics claim

This matter was raised as a priority item, my advice was that this clearly did not comply. Heinz had advised that the use of prebiotics is consistent with the legislation as implemented and enforced in the UK, because prebiotics are listed in Annex IV albeit in more technical language. Notwithstanding this following a recent meeting with the FSA a decision was made by Heinz to remove this claim.

Preparation Instructions

In the matter of the preparation instructions, I expressed my opinion that it was important that mothers understood that they should not leave boiled water for more than 30 minutes before mixing with formula powder and that the existing guidelines may not be entirely appropriate. Heinz had advised that they did not agree with my interpretation of Guidance Note 24 in this regard. Notwithstanding this following a meeting with the FSA a decision was made by Heinz to amend the preparation guide when the label change to the pre biotics claim takes place.

Nurture/ idealizing text

I expressed the opinion that Nurture text may imply happiness and well being of carers and that this may as a result idealize the product. Heinz refer to research conducted with consumers and their position remains that they are compliant with Regulation 17 3 (b)

Shelf Talkers

I advised Heinz that the evidence that I had received indicates that Infant milks and follow on milks are being displayed at point of sale next to each other and on the same shelf. Furthermore Special display shelf talkers are placed beneath follow on milk products promoting follow on milk. As a consequence consumers may be drawn to the new infant formulas. This was contrary to Guidance Note 53. In summary I am advised that Heinz have little control over how retailer display and merchandise infant formulae in their stores.

Advertisements with Idealizing Claims

I advised that my opinion was that the following statements constitute health claims;

"betapol ceases constipation and overcomes the problems associated with fatty acid absorption"

'new betapol to increase fat absorption' '

'new betapol to ease constipation'

"alphan lactalbumin, new betapol, LCP and betapol improve calcium absorption"

'LCP's for brain and eye development'

'Prebioics promote a healthy gut to support immune system and ease constipation'

and that I was of the opinion that these health claims were not permitted because they are not included in ANNEX IV of 2006/141. Heinz advise that these claims are subject to IDACE

applications to the EFSA and that these transitional provisions allow claims until a final list of permitted claims is released. Accordingly they maintain they are compliant.

There is, as yet, no indication that enforcement action will be taken over those issues where Heinz is refusing to act. Regarding the labelling changes that Heinz has agreed to make, although the labelling requirements of the 2007 Regulations do not come into force until 2010, the 'Prebiotics' claim is non-compliant with the 1995 version of the Regulations and so Heinz should not have used it in the first place. Companies were informed by the FSA that such claims are non-compliant in 2006.

Wyeth/SMA disputes regulations - nothing changes

The response from Buckinghamshire Trading Standards to the BFLG August 2008 monitoring report, included in its entirety below, highlights the difficulty of enforcing the Regulations. The Regulations are also shown to be ineffective in addressing companies giving gifts to parents, targeting them directly with promotional leaflets or encouraging them to visit company websites, where information that is not allowed in advertisements is displayed.:

Page 12 websites

The manufacturer argues that their own website is not an advertisement because it is deliberately sought out by the consumer, in contrast to an advertisement which the consumer come across in an unplanned fashion when using media of various types. This enforcement agency would like to see websites controlled by the regulations. However, it seems that manufacturers will not accept that websites are advertisements unless the point is established via a successful prosecution.

Page 12 Careline Promotion

Free promotional towel branded with the name SMA Regulation 23(2). This regulation says that no manufacturer shall provide ...any gift...designed to promote the sale of an infant formula...EITHER DIRECTLY OR INDIRECTLY THROUGH THE HEALTH CARE SYSTEM OR HEALTH WORKERS. This towel appears to be provided to those mothers or pregnant women who contact the careline themselves. There is no suggestion that the towel is supplied either directly or indirectly through the healthcare system or health workers. Therefore, the provision of this towel does not infringe the regulations.

Page 13 labels

SMA has changed its labels and removed the references to protein balance. 'Easily digested' is a claim under discussion.

Page 14 scientific and factual information.

Point of clarification. If it comes to our attention that an SMA advertisement does not contain scientific or factual information we will advise the company to remove it or ask them to justify it to us. We have legal powers under the Food Safety Act 1990 to require them to produce evidence if we have reason to believe an offence has been committed. There is no legal obligation for

a manufacturer to supply evidence to health workers.

Page 14 – flier in doctors' surgeries

A leaflet encouraging women to contact the SMA Baby Club is not in breach of the Regulations. The supply of informational and educational materials (in response to such a leaflet) is permitted so long as the material meets the conditions listed in the regulations.

Taking legal action – what enforcement authorities have to consider.

Enforcement authorities have to consider a number of things when deciding on the action to take in the face of apparent infringements of legislation. Taking formal legal action involves several decision making stages, including a check that the action is in accordance with an Authority's enforcement policy, that action complies with the Regulator's Compliance Code and that there is a very high probability of conviction should it go to prosecution. In addition, a successful prosecution requires proof beyond all reasonable doubt. This may be very difficult where the law is unclear or is subjective. Written warnings and formal cautions require the same level of proof and compliance with enforcement codes as prosecutions.

Buckinghamshire Trading Standards continues to seek regulatory compliance with the industry, by advice and co-operation if at all possible. Whilst Buckinghamshire states it does not consider breach of the guidance constitutes an offence for which legal action can be taken, it will continue to encourage Wyeth, for which Bucks acts as Home Authority, to comply with the guidance as well as the Regulations.

In response to the May 2008 report, the Home Authority for Wyeth/SMA did concede that the provisions of the Guidance Notes may have been breached by point-of-sale promotion, but stated:

It may not comply with good practice in the guidance notes, but it does not infringe the 2007 Regulations. Therefore enforcement action cannot be taken.

The Government did suggest that the Guidance Notes would be enforced and would go some way to meet stakeholders concerns about the loopholes in the law. This is not the reality.

Nestlé still not held to account over ongoing breach

Nestlé is not currently in the mass formula market in the UK, marketing only specialised formulas. However, it is believed to be preparing the way to enter the mass market (though it told Trading Standards this is not the case). For several years it has been distributing a video to health workers without having the written authorisation from the Secretary of State required by the *Infant Formula and Follow-on Formula Regulations* 1995 and 2007. When it was launched, Baby Milk Action queried whether Nestlé had the necessary authorisation to distribute the video and found that it did not, though apparently it tried, unsuccessfully, to obtain this retrospectively.

The Home Authority continues to pursue this with the company and the Food Standards Agency, and has also raised the issue of

Nestlé sponsorship of health workers. The full response to the August 2008 report is as follows:

Basically, the questions I referred to the Agency can be summarised as follows:

(1) is sponsorship by an Infant Food manufacturer for Health Care Professionals, journalists & politicians to attend various events or go on trips covered by the Infant and Follow-on Formula Regs?

(2) is production of educational or informational material for Health Care Professionals covered by the Regs?

(3) how to deal with the video?

The response from the Agency is that they do not think that sponsorship itself of this kind is covered by the Regs however any informational or educational equipment or materials donated at these events would have to comply with the conditions set out in regulation 24(4)(a)-(d). Similarly, the donation and distribution of the video would have to comply with regulation 24(4)(a)-(d).

The possibility of a meeting between the Agency, Nestle and myself is being explored when the issues raised in your bulletin can be discussed in finer detail.

Advertising Standards Authority clears formula advertisements

The ASA was asked to investigate a ‘laughing babies’ advertisement promoting the Cow & Gate brand and directing parents to the company website. This makes it a de facto infant formula advertisement, and so illegal. However, the product shown was a follow-on formula for use after 6 months of age. The Department of Health recommends continued breastfeeding beyond 6 months and the advertisement is also undermining breastfeeding beyond 6 months. The advertisement claims that Cow & Gate formula is important for ‘Key nutrients’, ‘Healthy digestion’ and ‘Natural defences’. These claims are not supported by the evidence and undermine breastfeeding. In reality, formula lacks key constituents found in breastmilk, formula-fed infants are more likely to suffer - and be hospitalised - with gastroenteritis than breastfed babies, and their natural defences are compromised as they do not have the immediate and developmental protection provided by breastmilk.

The ASA rejected the complaints about the advertisement. It also rejected complaints about a Wyeth/SMA advertisement. Its summary of its decisions is given here:

Cow & Gate (Nutricia) (featuring the laughing babies.)

The ASA found the ad not to be harmful or offensive as it did not denigrate breastfeeding or promote formula milk as a breastfeeding substitute. Instead it had text that clearly stated “Follow-on milk should only be used as part of a mixed diet from 6 months. It is not a breast milk substitute. Talk to your healthcare professional”.

All the babies were over 6 months of age and we saw a copy of

the birth certificate for the youngest-looking baby that showed it was 7 months of age at the time of filming.

SMA (John Wyeth & Brother Ltd) (where a father offers to help with night feeds)

The ASA did not uphold complaints that the ad was misleading or harmful as all the babies were shown to be over 6 months of age at the time of filming. Nor was it found to be discouraging or denigratory to breastfeeding. The phrase “for infant nutrition trust the experts - we know” was also considered to be an expression of opinion regarding SMA’s knowledge of infant nutrition and research into this area. This was substantiated by their 90 year history of research and development. In the table of examples, however, the detail for this ad is that it ‘Promotes the SMA brand and website’. Whilst this was not the basis of the complaint submitted to the ASA, it should be noted that it is not a breach of the Advertising Codes to include website information. In this particular case, the website information was on the same screen as follow-on formula for babies between 6-24 months. In the context of the ad as a whole, there was nothing that was deemed to be a breach of the Codes.

We are currently investigating ads for Cow & Gate (‘immune system under construction’) and Aptamil (Immunofortis).

ASA response to the August 2008 report

The ASA provided a written response to the 2008 report, which is included below in its entirety.

ADVERTISING STANDARDS AUTHORITY RESPONSE TO THE BABY FEEDING LAW GROUP AUGUST 2008 REPORT

I am writing on behalf of the Advertising Standards Authority (ASA) in response to the August 2008 edition of the work by the Baby Feeding Law Group (BFLG). I appreciate this chance to respond to some of the points brought up in the report and to clarify our position.

The August report appears to bring into question the ability and willingness of the advertising regulatory system to take action against follow-on formula advertisers. The ASA takes its role extremely seriously and if there appears to be problems with a follow-on formula ad then we will look into it.

Of particular concern to the ASA is the section of the report at the bottom of page three, entitled ‘Advertising Standards Authority – still waiting’, which states:

The Guidance Notes attempt to ascribe a role to the ASA in regulating advertising but the ASA said during the consultation on these: “The FSA’s interpretation of an advertisement is broader than the Advertising Codes, the ASA has no role in maintaining standards in these areas.”

It should be noted that the ASA regulates advertising as defined by the Advertising Codes written by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) only. We have no remit or

authority to apply standards to promotions or communications that are beyond the scope of the Codes (regardless of the sector in question) and the ASA Council cannot be bound by the content of a guidance document. We do not dispute that the an advertising or promotion definition can be drawn more broadly than the remit of the Codes, we simply wanted to make clear to the Food Standards Agency (FSA) that we would be unable to apply our Codes to those areas.

You have written that we should be 'protecting child rights' by withdrawing ads that you consider to have breached the UN Committee's report on the Rights of the Child. We would like to point out that we have received no representation from the UK Government concerning the UN Committee report on the Rights of the Child. In fact the report does not even make clear whether the marketing activities that concern the Committee are those that fall within the remit of the CAP and BCAP Codes.

The ASA is here to ensure responsible advertising. As you know, advertising of follow-on formula is permitted so long as it complies with certain rules. We enforce those rules rigorously and are always open to receiving complaints about advertisements that appear to breach those rules.

The Advertising Codes are clear that marketing communications must comply with the law. Therefore, if necessary and where appropriate, we may take account of the Infant and Follow-on Formula Regulations and FSA guidance. Wherever possible the CAP and BCAP Codes try to avoid product specific clauses in the Codes in favour of principles-based rules. This is in line with better regulation principles to ensure that regulation is straight forward. Importantly it means that the Advertising Codes remain a practical length and therefore useful to advertisers, media owners and agencies. Furthermore, the more general, principles-based rules are flexible and can be adapted easily in response to specific issues or concerns.

For example, general clauses include that ads must be legal, decent, honest, and truthful, and prepared with a sense of responsibility to consumers and to society. The full CAP and BCAP codes can be viewed on the CAP website . Incidentally, CAP and BCAP will be putting out the Codes in their entirety for public consultation shortly and you will be able to respond both on the remit of the ASA and any Code clauses as you see fit.

As with any complaint, when the ASA receives a complaint about a follow-on formula ad, our complaints team will assess the advertisement to see if it falls within the remit of the Advertising Codes. If the ad is in remit, the team will then assess the content and targeting of the advertisement to check whether it is in line with the Codes. If there is any doubt about the advertiser's compliance with the Codes, we will investigate the advertisement further. Whilst we realise we may not always agree on individual cases the final ruling is always made by the ASA Council. The ASA Council is made up of lay people and is independent of the advertising industry.

However, I am concerned that some examples of ads that have appeared in the RCM Journal and Community Practitioner have details attached to them saying that 'the ASA refuses

to investigate such cases.' The ASA is not able to set its own remit and our remit simply does not extend to health-related claims in marketing communications addressed to the medical, dental, veterinary and allied professions. I would suggest that the best course of action in these cases may be to forward your concerns to Trading Standards or the FSA.

The ASA will continue to be vigilant and ensure that advertisers do not breach our Codes as set out by CAP and BCAP.

Conclusion

It is very welcome that the enforcement authorities are now starting to use the channel of communications and reporting established with LACORS of which these reports are part. Some of the issues have been raised by Home Authorities with the companies concerned, though in some cases ambiguity in the Regulations has been highlighted. There is also the need for principles to be established in court - though there appears to be a reluctance to bring the necessary test cases.

Aside from some welcome changes to labelling in the case of Heinz and Wyeth - the removal of claims that should never have been used in the first place - in virtually all cases shown in these reports, including those taken up by Home Authorities, the companies have rejected the complaints with apparent impunity.

Appendix 1b: Table of examples featured in reports

Generally reference is made to the Guidance Notes accompanying the *Infant Formula and Follow-on*

Company	Product	Details	Report	Reg.	Enforcement action
Danone	Aptamil brand, site, careline and baby club	Your baby's health start begins with you' advertisement in Prima Pregnancy and Birth, December 2008.	Pg. 4 March '09.	GN 67, 77 et al	Response awaited
Danone	Cow & Gate brand, site, careline and baby club	'Would a cuddle be useful' advertisement in Prima Pregnancy and Birth, December 2008.	Pg. 4 March '09.	GN 67, 77 et al	Response awaited.
Danone	Cow & Gate brand, site, careline and baby club	'Share your wonderful news' postcard pamphlet in birth registries	Pg. 4 March '09.	GN 67, 77 et al	Response awaited.
Danone	Cow & Gate brand, site, careline and baby club	'Do I look like I need more vitamins and iron?' advertisement in Prima Pregnancy and Birth, December 2008.	Pg. 5 March '09.	GN 67, 77 et al	Response awaited.
Danon	Aptamil brand	Shelf talker promoting the follow-on formula pack shot alongside the brand name in the colours of the infant formula, placed under the infant formula. In Waitrose, March '09	Pg 7 March '09	GN 53 et al	Response awaited
Danone	Aptamil brand and infant formula	Free calendar in the British Journal of Midwifery, available in high street newsagent WH Smith, November '08	Pg. 8 March '09.	GN 54 et al	Response awaited.
Danone	Aptamil brand and infant formula	Advertisement making claims about prebiotic 'immunofortis' in RCM Journal, October 2008.	Pg. 8 March '09.	GN 54 et al	Response awaited.
Danone	Cow & Gate brand and follow-on formula	Advertisement making claims about prebiotics in Community Practitioner, December 2008	Pg. 8 March '09.	GN 54 et al	Response awaited.
Danone	Cow & Gate and Aptamil brands and health worker information	Even held by company representatives in breach of PCT policies where gifts and idealising information were distributed, November 2008.	Pg. 9 March '09.	GN 54 et al	Response awaited.
Danone	Cow & Gate brand, site and careline	'Immune system under construction' - <i>Practical Parenting</i> and <i>Mother and Baby</i> March 2008 editions	Pg. 4 May '08	GN 67 et al	Response awaited. ASA ruling in 2006 against similar claims.
Danone	Aptamil brand, site and careline	'Your baby's natural immune system' - <i>Practical Parenting</i> and <i>Mother and Baby</i> March 2008 editions	Pg. 5 May '08	GN 67, 70 et al	Response awaited. ASA ruling in 2006 against similar claims.
Danone	Aptamil brand, site and careline	'IMMUNOFORTIS' promotion - television advertisement, terrestrial and cable channels (e.g. Channel 4, 3 May) and website.	Pg. 5 May '08	GN 67, 70 et al	Response awaited. ASA investigating.

NOTE: All these cases are believed to be actionable under the current enforcement system, but the willingness of authorities to act may be compromised by the loopholes that exist in the regulations which companies see as allowing them to promote formula brand names if specific mention is made to the follow-on formula in the range. The limited restrictions on follow-on formula advertising, based on experience so far, makes it hard for authorities to act on blatant idealizing promotions that undermines breastfeeding.

Company	Product	Details	Report	Reg.	Enforcement action
Danone	Aptamil infant formula.	Shelf talker promoting the infant formula as 'great value' in Tesco, Heddington on 9 June 2008. Infant formula and follow-on formula are not displayed separately in the store.	Pg. 6 Aug. '08	GN 53 et al	Local action may have been taken in this specific case, but the problems is widespread.
Danone	Aptamil infant formula.	'Benefits of IMMUNOFORTIS prebiotics' advertisement in <i>RCM Journal</i> in April 2008. The claim is not the permitted list. This and other information is not 'scientific and factual'.	Pg. 8 May '08	GN 54 et al	Response awaited. ASA refuses to investigate such cases.
Danone	Aptamil infant formula.	'Why you can count on Aptamil First' advertisement in <i>Community Practitioner</i> in August 2008. Claims are not the permitted list. This and other information is not 'scientific and factual'.	Pg. 7 Aug. '08	GN 54 et al	Registering case with this report. ASA refuses to investigate such cases.
Danone	Cow & Gate infant formula	'What every midwife should know' - misleading advertisements in <i>RCM Journal</i> in April 2008. Information is not 'scientific and factual'.	Pg. 8 May '08	GN 54 et al	Response awaited. ASA refuses to investigate such cases.
Danone	Cow & Gate infant formula	Misleading advertisements in <i>Community Practitioner</i> in August 2008. Information is not 'scientific and factual'.	Pg. 7 Aug. '08	GN 54 et al	Registering case with this report. ASA refuses to investigate such cases.
Danone	Aptamil infant formula and Cow & Gate infant formula	Price reduction in Co-operative Supermarket, Aberystwyth, 30 May 2008.	Pg. 7 Aug. '08	Art. 19 1995 Art. 23 2007	Local action may have been taken in this specific case, but the problems is widespread.
Heinz	Nurture brand, site, careline and baby club	Advertising feature in the free Asda magazine, August 2008.	Pg. 7	GN 67, 77 et al	Response awaited.
Heinz	Farley's infant formula	Labels contain idealizing text and images. Labels do not provide information that powdered formula is not sterile and how to reduce risks as called for in GN 24. Labels available in the shops.	Pg. 9 May '08	Art. 13 1995 Art. 17 2007	No sanctions imposed. Products have now been replaced by Heinz Nurture.
Heinz	Heinz Nurture infant formula	Labels contain idealizing text and images. 'Prebiotic' claim breaches 1995 and 2007 Regulations. Labels do not provide information that powdered formula is not sterile and how to reduce risks as called for in GN 24. Labels available in the shops.	Pg. 8 Aug. '08	Art. 13 1995 Art. 17 2007	Home authority reports that the 'prebiotic' claim is to be removed. Other issues pending.
Heinz	Heinz complementary foods	Promoted for use from 4 months of age on labels and in an advertisement in <i>Practical Parenting</i> April 2008. This undermines government recommendations on exclusive breastfeeding.	Pg. 9 May '08	-	Response awaited. Unregulated area, though breaches Department of Health policy.
Heinz	Heinz Nurture brand and site.	"New Nurture helps nourish, protect and develop your baby." Television advertisement promoting Nurture formula misleadingly as 'complete' for providing for 'essential aspects' of infant development. Cable and terrestrial television (eg During 'Live at the Apollo' on Dave cable TV on 5 August 2008.	Pg. 8 Aug. '08	GN 67 et al	Home authority advised Heinz that claims are not compliant. Heinz maintains they are compliant
Heinz	Heinz Nurture range	Promoted with Heinz "NEW" shelf talkers in supermarkets, which are placed with the full range of formulas (though picturing only the follow-on milk). Example from Boots - Chelmsford (24 August),	Pg. 8 Aug. '08	GN 53 et al	Home authority advised Heinz this is contrary to Guidance Note 53. Heinz claimed to have no control over practices of retailers.
Heinz	Heinz Nurture brand and site.	"A new arrival offering constipation relief" advertisement with idealizing claims that undermine breastfeeding, in <i>Community Practitioner</i> in August 2008.	Pg. 8 Aug. '08	GN 54 et al	TS advised Heinz that these health claims were not permitted. Heinz maintains they are compliant.
Hipp	Hipp brand, site, careline and baby club	Baby's first year' diary in birth registries	Pg. 4	GN 67, 77 et al	Response awaited.

Company	Product	Details	Report	Reg.	Enforcement action
Hipp	Hipp complementary food	'Why is Hipp organic mum's choice?' advertisement for complementary foods in <i>Pregnancy and Birth</i> , March 2008. Undermines exclusive breastfeeding to 6 months by promoting complementary foods for use from 4 months.	Pg. 11 May '08	-	Response awaited. Unregulated area, though breaches Department of Health policy.
Nestlé	Nestlé HA formula	The brand name 'hypoallergenic' is idealizing. It is prohibited in North America due to parents mistakenly using such formula for feeding infants with allergies to cow milk constituents, prompting cases of anaphylactic shock. Despite the term 'hypoallergenic' the formula is not suitable for infants who suffer from allergy - the intended purpose of the formula is to reduce the risk of an allergy developing. Annex IV to the Regulations allows a claim about: "reduction of risk to allergy to milk proteins" if certain criteria are satisfied, but the term 'hypoallergenic' is not on the permitted list.	Pg. 12 May '08	Annex IV	The Home Authority has stated that the labels were agreed in discussion with Nestlé.
Nestlé	Nestlé brand name	A video, ostensibly to promote breastfeeding, has been distributed to health workers, despite Nestlé failing to gain required approval for the item in 2005. Health experts have criticised the content of the video. Nestlé has said the purpose of gifts is to keep the company name and products in people's minds.	Pg. 12 May '08	Art. 21 (3) 1995 Art. 23 (4) 2007	The Home Authority has confirmed that Nestlé tried and failed to gain approval in 2005 and has asked it to try again.
Nestlé	Nestlé-sponsored training days	Nestlé is sponsoring training days to be held in October promoted, organised and run by people with whom it is closely associated, including a Nestlé Nutritionist. While the sponsorship is indicated, the conflicts of interest have not been revealed.	Pg. 12 May '08 Pg. 11 Aug. '08	Reqd.	The Home Authority has stated that Nestlé told it the organiser HCP Health Care is the organiser of the events. Nestlé did not admit to its connections to the proprietor or main speaker.
Wyeth	SMA brand and website	'You'll be out of the door in no time' advertisement in <i>Practical Parenting</i> , March 2008. Promotes the SMA brand, SMA Progress follow-on milk and the SMA website, where all formulas are promoted..	Pg. 14 May '08	GN 67 et al	The Home Authority has stated that it will take no action over this advertisement
Wyeth	SMA brand and website	'You give up your career' advertisement in <i>OK</i> magazine, April 2008. Promotes the SMA brand, SMA Progress follow-on milk and the SMA website, where all formulas are promoted..	Pg. 14 May '08	GN 67 et al	The Home Authority has stated that it will take no action over this advertisement
Wyeth	SMA brand and website	Television advertisement in which a father offers to help his wife with night feeds. Promotes the SMA brand and website.	Pg. 14 May '08	GN 67 et al	The ASA has rejected complaints from Baby Milk Action and 108 others about this advertisement.
Wyeth	SMA Gold infant formula and others in the range	Labels carry idealizing text and images, including: "New improved protein balance", "Easily digested", "Love the milk you give", "Gold", a mother's face and a breastfeeding logo. Labels do not provide information that powdered formula is not sterile and how to reduce risks as called for in GN 24. Labels available in the shops.	Pg. 15 May '08	Art. 13 1995 Art. 17 2007	The Home Authority reports: 'SMA has changed its labels and removed the references to protein balance. Easily digested' is a claim under discussion.' No action over the other issues due to them being 'subjective'.

Company	Product	Details	Report	Reg.	Enforcement action
Mead Johnson	Enfamil infant formula and 'specialised' formulas	Pamphlet included in pack provided to health workers by Bounty representative, March 2008.	Pg. 9 March '09.	GN 54 et al	Response awaited.
Wyeth	SMA brand, site, careline and baby club	Our free DVD will get you through the first 48 hours' advertisement in Prima Pregnancy and Birth, December 2008.	Pg. 5 March '09.	GN 67, 77 et al	Response awaited.
Wyeth	SMA Gold shelf talker	Shelf talker promoting the Tesco Price Match for SMA Gold infant formula in Somerfield January '09	Pg. 7 March '09.	GN 53 et al	Response awaited.
Wyeth	SMA brand	Point-of-sale promotion in Morrisons, Aberystwyth, 10th November 2007 and Babies-R-US 21st January 2008.	Pg. 16 May '08	Art. 19 1995 Art. 23 2007	The Home Authority stated: "It may not comply with good practice in the guidance notes, but it does not infringe the 2007 Regulations. Therefore enforcement action cannot be taken."
Wyeth	SMA infant formula	'The Alpha Protein benefits of SMA Gold are clear' advertisement in RCM Journal in April 2008 to encourage health workers to promote the 'new improved protein balance' claim to parents. Wyeth has been reluctant to provide substantiation when asked by a Primary Health Care Trust.	Pg. 14 May '08	GN 54 et al	The Home Authority stated: "Lack of provision of scientific substantiation - since the manufacturer has no legal obligation to provide this information, it is not in breach of the Regulations."
Wyeth	SMA brand, site and careline	'We're here for you' advertising feature in Prima Baby magazine, September 2008. Implies that all mothers need to bottle feed their babies and promotes the SMA site where all formulas are advertised.	Pg. 13 Aug. '08	GN 67 et al	The Home authority has commented: 'This enforcement agency would like to see websites controlled by the regulations. However, it seems that manufacturers will not accept that websites are advertisements unless the point is established via a successful prosecution.'
Wyeth	SMA brand, site and careline	'An important delivery' flyer found in a clinic in May 2008 (details on file). Targets pregnant women with the brand name and encourages them to visit the SMA site where all formulas are advertised.	Pg. 13 Aug. '08	GN 67 et al	The Home Authority reports: 'A leaflet encouraging women to contact the SMA Baby Club is not in breach of the Regulations. The supply of informational and educational materials (in response to such a leaflet) is permitted so long as the material meets the conditions listed in the regulations.'

Appendix 2: Health claims on follow-on formulas

The **European Food Safety Authority (EFSA)** is currently evaluating applications for Claims referring to the reduction of disease risk or to children's development or health under Article 14 of the **EC Regulation on nutrition and health claims**.

The Baby Feeding law Group has submitted several comments to EFSA regarding its concerns about the process, on the basis that none of the products in question could have a health advantage over breastfeeding, and allowing claims on foods for infants and young children would mislead the public and undermine breastfeeding and sound complementary feeding.

This issue has relevance for the Independent Review Panel in that any decision that Member States might make to approve a health or development claim will fundamentally affect the marketing of follow-on formulas, greatly increasing their promotion and adding to parents confusion about their nutritional value and safety.

The BFLG view is that follow-on formulas are breastmilk substitutes - albeit for the older baby and that if an ingredient has been unequivocally demonstrated to be essential and beneficial by an independent review of data, which must contain as large as possible proportion of independently-funded research, it should be a mandatory ingredient in all breastmilk substitutes, not flagged up with a claim for commercial advantage.

We are pleased that EFSA seems to have taken a fairly tough line with many of the applications, for example rejecting applications for claims that DHA and AHA improve brain development (EFSA-Q-2008-212, EFSA-Q-2008-329) and claims that galacto-oligosaccharides reduce intestinal ailments (ESA -Q-2008-270). We hope that these decisions will be accepted by Member States and that the misleading claims will be removed by the companies wherever they occur. However, EFSA did recently approve a **Mead Johnson** claim for DHA and visual acuity (Question No EFSA-Q-2008-688) Below we outline some concerns which we will be presenting to the European Commission regarding this.

- We believe that the claim should have been rejected by EFSA on the very key basis that *“none of the studies presented has shown a benefit of either DHA alone or DHA plus ARA on visual development as compared to the breast fed control group.”*
- Infant formulas will (rightly) not be able to carry the approved claim because it is not listed in Annex 1V of EC Directive 141/2006. If a follow-on milk might does so - even if qualifying statements are made along side the claim - parents might well be led to believe that the product - on its own- will confer the advantage suggested and might well give up breastfeeding on the strength of this.
- EFSA based its opinion on industry sponsored research: *“The Panel could have not reached this conclusion without considering the studies claimed by the applicant as proprietary”* Industry sponsored research seems to claim positive results more often than research that is independent from commercial interests (BMJ 2003;326:1167-70; JAMA 2008;300:1069-71).
- A link to declarations of conflict of interests by the members of the panel and all those consulted is missing from the report. This might help interpret the conclusions.
- It is our understanding that the evidence provided by Mead Johnson in this case relates to infant formulas fed from birth, to breastmilk and to a small study using solid food - but not to follow-on formulas fed alongside other foods. One of the studies quoted (Hoffman et al) supposedly proved an effect for supplementation of solid food alongside breastfeeding studied 51 infants. However, there seems to be no mention of blinding either of parents or investigators and the milk intakes are not measured, but assumed. The actual contribution of breastmilk to DHA intake in either group is therefore not known but estimated.
- We have concerns about the efficacy and safety of the artificially-made versions of DHA and AA - and note with alarm the EFSA disclaimer: *“The present opinion does not constitute, and cannot be construed as, an authorisation to the marketing of docosahexaenoic acid and arachidonic acid, a positive assessment of its safety, nor a decision on whether docosahexaenoic acid and arachidonic acid are, or are not, classified as a foodstuff. It should be noted that such an assessment is not foreseen in the framework of Regulation (EC) No 1924/2006.”*
- The efficacy and safety of the artificially-made long-chain fatty acids are questionable. We would refer the IRP to the report by the **Cornucopia Institute** in the USA, regarding the adequacy of information to determine safety and efficacy of the clinical trials required for premarket approval of these LCPs. Cornucopia and the

National Alliance for Breastfeeding Advocacy (NABA) are petitioning the FDA for labels to warn of the possibility of an adverse reaction to DHA/ARA-supplemented formula. (see *Replacing Mother, Imitating Human Breast Milk in the Laboratory* (Jan 08) www.cornucopia.org)

The law isn't working - little action taken

This is one of a series of reports showing some of the methods the main baby milk companies in the UK are using to promote their products. They boost sales by undermining breastfeeding and idealising their products. Parents that use formula are misled.

Companies are advertising on television and in magazines.

They encourage parents to visit websites which suggest their products protect against infection, help in the development of intelligence, ensure babies sleep through the night and relieve constipation.

They provide free gifts if mothers join baby clubs to receive company promotional materials.

They use telephone 'carelines' to idealize their products and undermine independent advice from health workers.

They compete to have the most appealing cuddly animal images on their labels and the most impressive sounding ingredients. But they do not warn that powdered formula is not sterile or the simple steps required to reduce health risks.

The examples selected for this report are not necessarily the worst cases of companies undermining breastfeeding and misleading parents who use formula. They have been selected because they are believed to break the UK *Infant Formula and Follow-on Formula Regulations*. These are weak measures that allow many other aggressive practices to take place.

To date, the Regulations have not been enforced - since being introduced in 1995 there has only been one prosecution, for illegal advertising. Though successful, similar practices continue unpunished.

This edition examines what action was taken by Trading Standards offices and the Advertising Standards Authority over the cases highlighted in the May and August 2008 reports. Sadly, this can be summarised as virtually none so far, though most Home Authorities still need to respond. Companies appear free to aggressively market their products, targeting mothers even before their babies are born

Find out more about the monitoring project coordinated by Baby Milk Action on behalf of the Baby Feeding Law Group at www.babyfeedinglawgroup.org.uk

You can denounce aggressive marketing practices via the website. You just might find your information used in a future report!