

April 2008

## Response to briefings and blogs from Mr. Tom Levitt MP on Nestlé's baby food marketing practices



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](http://www.babymilkaction.org)

[www.ibfan.org](http://www.ibfan.org)

Dear

### Incorrect information relayed by Tom Levitt MP

I am responding to your query over the truth or otherwise of the assurances given in comments by Mr. Tom Levitt MP.

I am afraid the information he is presenting contains numerous factual errors. We have tried to draw these to the attention of Mr. Levitt and proposed a meeting so we can provide a full briefing. Regrettably we have only received a standard response from his office. Mr. Levitt has posted a blog entry on his site dismissing some of the information sent to him and has a standard letter responding to members of the public. Unfortunately the blog does not allow people to leave comments on it. We have brought the information contained in this response to Mr. Levitt's attention and hope he will issue corrections to what he has disseminated.

While Mr. Levitt has accepted gifts from Nestlé in the past, such as tickets to Wimbledon tennis tournament and the expenses-paid trip to South Africa mentioned in his comments and has referred to Nestlé's importance to the local economy in his constituency, he would, no doubt, claim to be of independent mind. It is a great surprise, therefore, that he has apparently accepted Nestlé's dismissal of the evidence of malpractice without making the simplest of checks. As Mr. Levitt tries to suggest malpractice is in the distant past I will commence with a current case.

### Nestlé advertising in South Africa

Mr. Levitt visited Nestlé's operation in South Africa in February 2008. In December 2007 Nestlé launched a promotion for Nan infant formula, including in Johannesburg, where Mr. Levitt stayed, with shelf talkers in supermarkets and new idealizing health claims on labels.

We brought the shelf talkers and labels to Mr. Levitt's attention after reading an article from him in the Buxton Advertiser claiming Nestlé malpractice was decades in the past.

On his blog Mr. Levitt reproduces Nestlé denials:

*"Mike Brady also refers to what he describes as "prohibited" NAN advertising in South Africa. This allegation is incorrect and the Advertising Standards Authority of South Africa has, in fact, already ruled that this advertising did not contravene any advertising restrictions. Mr Brady's final allegation that the health claims on the*

*NAN labels are non-compliant is also incorrect as the health claims fully comply with the South African regulations that apply to this product."*

There is no ruling published on the ASA website and Nestlé did not provide this when asked, though it did reply to our letter requesting it. The South African Department of Health (DH) points out that it is usually consulted on ASA rulings regarding formula marketing and has no knowledge of a ruling on the shelf talkers. Indeed the DH points out that the advertising code states: *"Appendix G 1.3.2 There must be no point-of-sale advertising..."*

Nestlé was informed that shelf talkers are viewed by DH as a breach of the international marketing standards, yet continues to defend the shelf talkers. As does Mr. Levitt.

Regarding the health claims on labels the DH position is that:

*"The SA Regulations 2 (9) (b) & (c) of the Regulations Governing the Labelling and Advertising of Foodstuffs, published under Government Notice No. R. 2034 of 29 October 1993 strictly prohibits health/curative/restorative/prophylactic/medicinal claims.*

*"Therefore, statements such as "optimal physical and mental development", "activate your baby's immune defences" and "strengthen your baby's natural defences" as indicated on the labels are just some examples of prohibited statements on NAN 1 and 2".*

We are well used to Nestlé making demonstrably untrue claims about its practices, but are shocked that a Member of Parliament should relay these before checking their accuracy. Such promotion and claims are illegal in Mr. Levitt's constituency, so it is particularly disappointing that he is defending these practices in South Africa and undermining the Department of Health's position in the process.

### **Nestlé's claim to follow the marketing requirements is untrue**

Nestlé claims: *"Nestlé was the first company to voluntarily adopt the WHO Code of Marketing of Breast Milk Substitutes (the WHO Code) as a minimum standard in all developing countries."*

The shelf talkers are a very clear breach of the both the Code and Nestlé own *Infant Formula Policy for Developing Countries*. Here are the relevant articles:

Article 5.1 of the Code: *"There should be no advertising or other form of promotion to the general public of products within the scope of this Code."*

Article 2: *"The Code applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula..."*

Article 5.3 of the Code: *"...there should be no point-of-sale advertising, giving of samples, or any other promotion device to induce sales directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss leaders and tie-in sales, for products within the scope of this Code."*

The Nestlé Infant Formula Policy in Developing Countries: "*NESTLE DOES NOT advertise or promote infant formula to the public.*"

We were so surprised that Mr. Levitt should see no conflict between these statements and what Nestlé the shelf talkers, which Nestlé itself referred to as ‘advertising’, that we conducted a poll on our website to see if members of the public thought Nestlé was breaking the Code. 100% of people completing the survey said it was.

In a letter to us, Nestlé no longer refers to the shelf talkers as ‘advertising’ but claims they are ‘information’, a rather absurd notion, particularly as information materials are required to include information that does not appear on the shelf talkers. Even if they were considered to be information, the Code is crystal clear that information materials, when permitted, must not refer to products or brand names. The shelf talker is advertising infant formula Nan 1 and follow-on formula Nan 2 and 3 – all three products sharing the same brand names – a harmful marketing practice which increases the chances of the products being misused and is not permitted under EU legislation.

**Independent assessment of our monitoring says it is ‘vindicated’**

Mr. Levitt says of the Breaking the Rules report 2004, produced by the International Baby Food Action Network (IBFAN):

*“200 accusations were laid against Nestlé for breaking the marketing code in a 2004 [sic]. And so they were: but 199 were disproved **by independent bodies** and the other one had been corrected two years previously.”* [emphasis added]

This is not only untrue, it contradicts what Nestlé itself says. Nestlé dismisses the violations, but does not claim they were disproved by independent bodies.

This is Nestlé’s statement about the report, published in Mr. Levitt’s local paper in correspondence relating to his column defending Nestlé: *“it is important to point out that **our analysis** of IBFAN's previous report in 2004 found that of the 200 allegations it contained only one was an actual violation and this had been corrected by Nestlé in 2002, two years before the report was published.”* [emphasis added].

The fact is that IBFAN provided details about the violations in the report at Nestlé’s request as it claimed it could not investigate where it had placed its own advertisements or the leaflets and other materials documented without additional information. After providing the information nothing more was heard from Nestlé on the subject.

An earlier report did prompt an independent investigation. Twenty seven academic, development and church organisations formed the Interagency Group on Breastfeeding Monitoring to investigate marketing practices after Nestlé similarly dismissed an earlier report (they are produced about every three years). The Group published *Cracking the Code* in 1997 and reported ‘systematic’ violations by Nestlé and other companies. Commenting at the time UNICEF stated that IBFAN’s monitoring was ‘vindicated’. While this investigation was 11 years ago, the types of violations are similar to those reported in the 2004 *Breaking the Rules* report and the latest edition published in November 2007.

In 1999 the UK Advertising Standards Authority ruled against Nestlé's claim in an anti-boycott advertisement that it markets infant formula 'ethically and responsibly' after conducting a two-year investigation. Nestlé was warned not to repeat this and other statements. While it does not do so in advertisements, it continues to make similar statements in its public relations materials and elsewhere, over which the ASA has no power to act.

Mr. Levitt's claim that Nestlé malpractice is from '30 or 40 years ago' disregards all of this evidence, including up to around the time he claims he was investigating in South Africa.

### **The danger to South Africa**

The claims being made in defence of Nestlé's activities in South Africa appear to be politically motivated. The South African government is currently consulting on legislation which aims to bring an end to the promotion of all breastmilk substitutes. The industry have, in the past, called for advertising restrictions to be lifted, citing its right to 'freedom of commercial speech'. No doubt the Government is under pressure to weaken the draft regulations.

The new law when it comes in will not only help the Government enforce the restrictions on advertising and health claims and protect breastfeeding, it will protect those babies who are fed on formula. Powdered formula is not sterile and may contain harmful bacteria. Simple steps can reduce the risks, but so far Nestlé is refusing to put this information on labels. The draft regulations require it to do so.

Mr. Levitt's erroneous claim that Nestlé has for decades abided by the Code in South Africa voluntarily undermines the call for strong legislation.

It is our hope that Mr. Levitt will review the situation and correct the misinformation he has been distributing. Our offer to meet remains. In the meantime we will do what we can to limit the damage and ensure the facts are made known, the Department of Health position is not undermined and infants and young children in South Africa are protected.

**We are asking those concerned about infant health to send a message of support to the government of South Africa.**

**Please visit:**

**<http://www.babymilkaction.org/CEM/cemapril08.html>**

**You can view the Nestlé label and find examples of other Nestlé malpractice from around the world via this link.**