**Court orders Nestlé to clearly signal the difference between infant formulas and growing-up milks**

IDEC filed a lawsuit against the company for cross-promotion that causes confusion for consumers

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The São Paulo Court granted IDEC (Brazilian Institute for Consumer Protection) an injunction against the company Nestlé Brasil, for cross-promotion practice. According to the court decision, within 60 days the company will have to put stickers on all the packaging of *Neslac Supreme, Neslac Comfor, Neslac Comfor Zero Lactose, Nestonutri and Ninho Fases 3+* products with the following warning:

***"ATTENTION CONSUMERS! This product called growing-up milk should not be confused with infant formula or whole cow's milk. Growing-up milks have packaging and labels very similar to those of infant formulas, they are usually placed side by side on the shelves of supermarkets and pharmacies and have lower prices. According to the Ministry of Health, they do not replace breast milk or infant formula, and should not be offered to babies and children under 2 years of age."***

In May of this year, IDEC filed a public civil action not only against Nestlé, but also against Mead Johnson Brasil and Danone, for making labels and packaging of infant formulas — whose commercial promotion is prohibited or restricted — similar to those of growing-up milks. IDEC's argument is that this type of strategy causes confusion, deception, and harm, especially for parents, mothers, caregivers, babies and young children.

After presenting the protocol of the action, all the companies were heard. The Public Ministry of the State of São Paulo also gave a favorable opinion to the requests of IDEC. However, in the decision of the Civil Court of São Paulo, the order to make adhesive stickers with warnings compulsory was applied only to Nestlé products, in view of the current similarity between the labels and packaging of their growing-up milks and infant formulas. The judge concluded that "the harmful potential, thus considered the power to confuse the consumer, is unequivocal", by accepting the request for more ostensible signage on the different products.

"We consider this decision of the Court very important, since it recognizes that the company's practice violates the Consumer Defense Code, as it restricts freedom of choice and disrespects the right to adequate information, in addition to violating laws protecting breastfeeding", said Igor Britto, director of Institutional Relations at IDEC.

Infant formulas serve to replace breast milk totally or partially, when necessary. Their use, however, must be exceptional and depends on the diagnosis of specific conditions, as well as a professional prescription. Their sale is regulated by Law No. 11,265/2006, known as NBCAL (Brazilian Standard for the Marketing of Foods for Infants and Young Children, Teats, Pacifiers and Bottles).

The NBCAL prohibits the promotion of infant formulas for children aged 0-1 years and restricts the promotion of products intended for children up to 6 years of age. Inspection is the responsibility of consumer protection and health surveillance agencies, including ANVISA (Brazilian Health Regulatory Agency).

On the other hand, growing-up milks are ultra-processed foods, whose composition must contain at least 51% of dairy ingredients, while the remaining 49% can vary, for example, between vegetable oils, fish oils, canola, soy, sugar, milk, and substances that improve palatability, such as food additives. Their identity and quality are regulated by a standard from MAPA (Department of Agriculture, Livestock and Food Supplies). The Ministry of Health advises against the use of these product for children under 2 years of age, due to the presence of sugar and food additives.

**Product similarities**

In the text of the action, IDEC shows that the characteristics such as colors, packaging format, type of font or prefixes and suffixes of the names are repeated both in infant formulas and in growing-up milks of the three companies. And this type of communication leads consumers to have to face a true “game of 7 mistakes” to identify differences between packages. Furthermore, it is not uncommon for the two types of products to be placed together on the shelves of sales premises, despite belonging to different categories.

The arguments of the lawsuit are endorsed by an attached technical report that analyzed characteristics of infant formula and growing-up milks packaging, concluding that there is no justification for such similarities.

In addition to the request for differentiating different products, the public civil action demands the companies, together, pay an indemnity of R$ 60 million (approx. USD 11.5 million) in collective moral damages and that the practice of cross-promotion of these products be recognized as illegal. IDEC also asks companies to individually indemnify consumers who have made a mistake due to this cross-promotion.

Equating the two products is also contrary to a recommendation by the World Health Organization (WHO), which suggests that companies that manufacture infant formulas refrain from promoting other products for babies and young children. “The practice of cross-promotion (...) is a threat to breastfeeding and infant health,” says the WHO.