



January 24, 2008

The Honorable Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

Dear Chair Majoras,

The Cornucopia Institute and the National Alliance for Breastfeeding Advocacy request the Federal Trade Commission to investigate possible violations of the law (15 USC 45) and to take immediate and effective action against the offending parties.

Several infant formula manufacturers, including Ross Products (Abbott Laboratories), Mead Johnson (Bristol-Myers-Squibb), PBM Nutritionals, Nestle, and Earth's Best (the Hain Celestial Group) are in possible violation of Section 5 of the Federal Trade Commission Act by misleadingly advertising infant formula containing the additives docosahexaenoic single cell oil (DHASCO) and arachidonic single cell oil (ARASCO), which are manufactured sources of the fatty acids DHA and ARA.

Presently, infant formula manufacturers are claiming in their advertisements that formula with DHASCO and ARASCO is “closer than ever to breast milk.” They use different variations of this claim, as well as the claim that formula with DHASCO and ARASCO will improve brain and eye development in formula-fed infants. These claims are likely to mislead consumers acting reasonably under the circumstances into believing that infant formula is equivalent, or near-equivalent, to human milk, and its use will result in superior cognitive, developmental, vision, and immune system outcomes. These claims have caused mothers to contact health care providers stating the following:

- “I want the breastmilk formula”
- “I want the formula with breast milk in it”
- “Whose breast milk is in the formula?”

We can supply additional backup and documentation upon request.

See the different advertisement claims:

 Similac® Advance® helps support both brain development like breast milk and the developing immune system.

(Kisses, hugs, and silly songs are up to you.)



Only Similac Advance with DHA and ARA has both*:

- A patented blend of special breast milk nutrients called nucleotides, which has been clinically shown to help support the development of a baby's immune system.
- Published long-term clinical research showing brain development like breast milk!

Compare levels of immunity supporting nucleotides*

	Breast milk	Similac Advance	Enfamil LIPIL™
No studies compare Similac and Enfamil immunity performance.	Bar chart showing the highest level for Breast milk.	Bar chart showing a middle level for Similac Advance.	Bar chart showing the lowest level for Enfamil LIPIL™.



So much like breast milk in so many ways.™

Breastfeeding is recommended for its many benefits. If you choose to feed formula, ask your doctor about Similac Advance. *Starting Enfamil with DHA and ARA. Infants studied at 12 and 18 months of age. Breast milk nucleotides likely represent a favorable setting for potentially available nucleotides in human milk; the full extent of immunological benefit is not known. This graph represents a comparison of different sites found in research for Similac Advance and reported levels of nucleotides for Enfamil LIPIL. Enfamil and LIPIL are registered trademarks of Nestlé USA Inc. ©2004 Abbott Laboratories.

www.SimilacAdvance.com

SEE HOW ENFAMIL LIPIL® MAKES A DIFFERENCE




These claims are misleading for several reasons.

First, the scientific data to support these claims is inconclusive. A thorough review of peer-reviewed, academic journals shows that the benefits of adding DHASCO and ARASCO to infant formula are uncertain and inconclusive. For example, a pediatrician and researcher at the University of Louisville writes in the June 2007 issue of the *Journal of Perinatology* that “the addition of long-chain polyunsaturated fatty acids and nucleotides to formula are intended to promote visual, neuro and immune development. Studies in both preterm and term infants have not consistently demonstrated efficacy with long-chain polyunsaturated fatty acids supplementation of infant formula.”ⁱ This is one of many such articles by respected scientists, who have published articles with similar conclusions—that there is insufficient evidence showing benefits of DHASCO and ARASCO in infant formula—in the *American Journal of Clinical Nutrition*, the *Annual Review of Nutrition*, *Pediatrics*, and the *Journal of Pediatric Gastroenterology and Nutrition*, to name just a few. Review articles demonstrate the same inconclusive evidenceⁱⁱ with no published scientific studies showing long-term benefits of DHASCO and ARASCO to brain development and IQ in formula-fed infants.

Second, breast milk offers innumerable health benefits to infants that formula cannot provide. To claim that formula is “as close as ever to breast milk” is misleading, given the scientific evidence showing breast milk to be immeasurably superior to formula in terms of infant nutrition and quite dissimilar in composition. The American Academy of Pediatrics writes that the advantages of breastfeeding include “health, nutritional, immunologic, developmental, psychologic, social, economic, and environmental benefits.” The Academy’s position is that breast milk is superior to formula.ⁱⁱⁱ

The American Academy of Pediatrics writes that benefits of breast milk include a decrease in the incidence and/or severity of a wide range of infectious diseases including bacterial meningitis, bacteremia, diarrhea, respiratory tract infection, necrotizing enterocolitis, otitis media and urinary tract infection. Breastfeeding decreases the rates of sudden infant death syndrome in the first year of life. Long-term health benefits of breastfeeding include decreased likelihood of developing—as older children and adults—lymphoma, leukemia and Hodgkin’s disease, hypercholesterolemia and asthma, as well as the likelihood of becoming overweight or obese. Post neonatal infant mortality rates in the United States are reduced by 21% in breastfed infants.^{iv} Promoting breastfeeding has the potential to prevent or delay 720 infant deaths in the United States every year, mostly by preventing infectious disease and sudden infant death syndrome.^v

Breastfeeding could potentially reduce annual health care costs by \$3.6 billion in the United States and would lead to decreased costs for public health programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).^{vi}

There is a grave likelihood that consumers will rely on misleading claims about DHA/ARA formula when making important decisions about feeding their infants. These advertisements are harming infants by undermining efforts at promoting breastfeeding and resulting in an increased incidence of acute and chronic diseases and conditions.

We have reason to believe that these misleading claims have already affected infant health in real ways. Results from a survey conducted by the U.S. Department of Human and Health Services^{vii} shows a significant rise in the percentage of Americans who believe that breastfeeding and infant formula are equally good ways to feed an infant—this rise occurred at the same time that infant formula manufacturers began marketing their DHA/ARA formula as “closer than ever to breast milk.” In 2003, 12% of respondents thought that breastfeeding and formula are equally good ways to feed an infant; one year later, this number shot up to 24%. The timing of this jump

coincides with the timing of the DHA/ARA advertisements. Even following the national advertisement campaign to promote breastfeeding by the Department of Human and Health Services, this figure did not return to its 2003 status; by 2005, still 15% of respondents thought infant formula is as good as breast milk.

Despite efforts to promote breastfeeding by health care professionals, public interest groups, and government agencies, breastfeeding rates are declining in the United States. While there are many factors contributing to a mother's decision to formula feed her infant, the impact of advertisement cannot be dismissed, especially when these advertisements are misleadingly suggesting that formula is an equally good way of feeding an infant.^{viii} We also have anecdotal evidence from health care professionals who find it more difficult to convince women to breastfeed when they have seen advertisements claiming that DHA/ARA formula is "as close as ever to breast milk."

The Federal Trade Commission is under a legal duty to end misleading advertisements, under Section 5 of the Federal Trade Commission Act, 15 USC 45. 15 USC 45 (a)(1) states that "deceptive acts or practices in or affecting commerce are hereby declared unlawful," and 15 USC 45 (a)(2) empowers and directs the Federal Trade Commission to prevent corporations from using deceptive acts in or affecting commerce.

The Federal Trade Commission has described a misleading advertisement as a representation, omission or practice that is likely to mislead the consumer.⁴ The FTC has also written that "the basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception."^{ix}

In the case of DHA/ARA formula, infant formula advertisements are likely to mislead parents into believing that formula offers benefits to their infant's development, when scientific research shows that this is an unproven conclusion. This deception in the advertisements causes serious injury not only to the consumer (the mother) but to the most vulnerable segment of our population—infants—by falsely claiming that infant formula is an equally good way of feeding an infant. In addition, there is a growing body of scientific literature indicating that discouraging women from breastfeeding could be deleterious to their health.

Thus, we urge you, the FTC, to thoroughly investigate this matter pursuant to your statutory authority, including but not limited to the issuance of a civil investigative demand. If deemed appropriate by the FTC, the Cornucopia Institute and the National Alliance for Breastfeeding Advocacy also seeks a permanent injunction pursuant to section 13(b) of the Federal Trade Commission Act (15 USC 53(b)) to prevent the marketing of this product if the claims are false and misleading.

Respectfully yours,



Will Fantle
Research Director
The Cornucopia Institute



Marsha Walker, RN, IBCLC
Executive Director
National Alliance for Breastfeeding Advocacy

ⁱ Adamkin, D.H. (2007) Controversies in neonatal nutrition: docosahexaenoic acid (DHA) and nucleotides. *Journal of Perinatology* 27, Suppl 1: S79–82.

ⁱⁱ Simmer, K. (2001) Longchain polyunsaturated fatty acid supplementation in infants born at term. *Cochrane Database Systems Review* CD000375.

Wright, K., Coverston, C., Tiedman, M., Abegglen, J.A. (2006) Formula supplemented with docosahexaenoic acid (DHA) and arachidonic acid (ARA): a critical review of the research. *Journal for Specialists in Pediatric Nursing* 11: 100–112.

ⁱⁱⁱ American Academy of Pediatrics (2005) Breastfeeding and the use of human milk. *Pediatrics* 115, 2: 496–506.

^{iv} American Academy of Pediatrics (2005) Breastfeeding and the use of human milk. *Pediatrics* 115, 2: 496–506.

^v Chen, A., Rogan, W.J. (2004) Breastfeeding and the risk of postneonatal death in the United States. *Pediatrics* 113: 435–439.

^{vi} American Academy of Pediatrics (2005) Breastfeeding and the use of human milk. *Pediatrics* 115, 2: 496–506.

^{vii} Haynes, S. National Breastfeeding Awareness campaign results. Office on Women's Health of the U.S. Department of Human and Health Services. Available online at http://www.4women.gov/breastfeeding/campaign_results.pdf.

^{viii} According to the Government Accountability Office, formula companies spent \$50 million on advertisements for infant formula, an increase of \$20 million from 2000.

^{ix} FTC policy statement on deception. Appended to Clifffdale Associates, Inc., 103 FTC 11, 174 (1984).