

# BRIEFING

BABY MILK  
ACTION



This advertisement for SMA formula misled parents and broke UK and international formula marketing rules.

The ASA's ineffective response to complaints shows its claim to ensure advertising is "legal, decent, honest and truthful" does not stand up.

## Happy birthday ASA?

**How the Advertising Standards Authority fails to protect babies and their families in the UK**



# Happy birthday ASA?

## Monitoring the baby milk companies



### Baby Milk Action - holding companies to account

Baby Milk Action is a not-for-profit organisation that monitors the baby food industry against internationally agreed minimum standards, specifically the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly.

It is the secretariat for the Baby Feeding Law Group (BFLG) in the UK, consisting of leading health professional bodies and mother support groups. Baby Milk Action coordinates the BFLG monitoring project.

In the UK companies must abide by the *Infant Formula and Follow-on Formula Regulations*, first adopted in 1995 and recast in 2007. Identical legislation has been adopted by the four countries of the UK. Guidance Notes were introduced by the Food Standards Agency in 2008 following widespread consultation which set out: "*how the regulations should be interpreted*".



Baby Milk Action registers complaints about violations of the Regulations with the Advertising Standards Authority (ASA), Trading Standards and Ofcom, as appropriate, and also informs the Department of Health and Food Standards Agency of concerns. As explained in this report, it has also called for authorities to uphold the *International Code* and Resolutions, which are minimum standards for the UK, as for other countries.

Regulatory authorities have taken action on some issues. For example, Trading Standards and the Food Standards Agency reminded companies claims such as "*closer to breastmilk*" are prohibited and should be removed from labels and advertising. The ASA has ruled against the claim from Danone and Pfizer/Wyeth that their formulas are "*the best*" and against some idealising claims, such as that formula "*helps to support your baby's natural immune system*".



However, in general, systematic violations of the Code and Resolutions and the UK Regulations continue with little or no action from the regulatory authorities.

The BFLG publishes monitoring reports and updates on its website exposing company marketing practices and the responses from the authorities.

Baby Milk Action runs its own campaigns to hold companies to account. For example, in June 2012 we successfully stopped Pfizer/Wyeth's SMA Baby Know How roadshow that was to tour shopping centres through a campaign reminding the shopping centres of their responsibilities.



# Happy birthday ASA?



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## Executive summary

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### How the Advertising Standards Authority fails to protect babies and their families in the UK

The Advertising Standard Authority (ASA) is celebrating 50 years of ensuring that advertising in the UK is "legal, decent, honest and truthful", yet mothers, babies and their families have little reason to be thankful.

Although the ASA has upheld some complaints brought against misleading advertising, the majority are rejected, and often not even investigated. This year Baby Milk Action complained that the ASA's own "legal, decent, honest and truthful" advertising slogan is misleading - to no effect.

The ASA refuses to apply a legality test to baby milk (formula) advertising. It says it is not its responsibility consider whether advertising for formula complies with the *Infant Formula and Follow-on Formula Regulations (2007)* and associated *Guidance Notes*. Even though the Regulations are specifically referenced in the *Code of Advertising Practice*.

The ASA rejects the argument that for baby milk advertising to be "decent, honest and truthful" it should abide by the internationally agreed minimum marketing standards for these products, standards that the companies claim to support and which have been endorsed repeatedly by the UK Government at the World Health Assembly. Violations are cleared by the ASA.

The advertisement shown on the cover of this briefing is one that the ASA did agree to investigate. It even upheld two of the four complaints registered by Baby Milk Action. Even so, no correction was printed anywhere in the papers that had run the advertisements on their front and back pages. The lack of a requirement to publish a correction is perhaps unsurprising when the advertisers fund both the regulator and the publisher of the advertisements (though it is ironic when health stories are often the lead story).

No fines were levied and instead of apologising Pfizer/Wyeth said it in its statement it was<sup>1</sup>: "*disappointed that two of the four complaints against the SMA Follow-on Milk advertising have been upheld*".

Things are done differently in some other countries. The week before the ASA celebrates its birthday, Brazilian media reported that five electronics companies had been fined at total of £1.5 millions by the Consumer Defence Department of the Ministry of Justice for misleading advertising.

Not for nothing has the UN Committee on the Rights of the Child repeatedly called on the UK Government to address the failings in the regulatory system.

Happy birthday ASA? Health advocates who call on it to deliver on its claim to ensure advertising is "legal, decent, honest and truthful" have little to celebrate.

Anything to celebrate?



The ASA is inviting people to celebrate its 50th birthday at an event on 25 October 2012.

The ASA's model of industry-funded, self-regulation is held up by companies who do not want to be held to account by independently monitored measures enforcing internationally agreed minimum standards.



As the ASA cracks open the champagne for its system that requires no corrections, levies no fines and whose rulings go largely unreported by the media that ran the adverts in the first place, in Brazil the media is reporting that television manufacturers have been fined a total of R\$5 million (£1.5 million) by the Department for Consumer Protection in the Ministry of Justice for misleading advertising.



## Happy birthday ASA?

### Legal?



The ASA Annual Report 2007 highlights it rejected 109 complaints about Wyeth's SMA television advertisement promoting the SMA brand. The packshots below show how advertising of the red tin cross-promotes the full range.



Under the UK Regulations and Guidance Notes, the terms infant formula, follow-on formula must be "in a font size no smaller than the brand name." The ASA ignores this in its rulings when it uses the presence of a packshot to reject complaints..



The ASA rejected the complaint that this national print and billboard campaign in 2012 was promoting the SMA brand.

The guidance on interpreting the Regulations makes it clear that promoting the brand is prohibited and it is not sufficient that "specific products are mentioned only in a footnote or in a picture of a tin of formula within the advertisement".

The ASA's own slogan suggests it ensures advertising is "*legal, decent, honest and truthful*". Yet, this slogan does not stand up to scrutiny when it comes to formula advertising. For example, in a typical message to Baby Milk Action (30 March 2012) the ASA stated it would not be looking at the legality of formula advertisements over which dozens of people and organisations had complained:

*We will not be considering whether the ad breaches the Infant Formula and Follow-On Formula Regulations 2007, European Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods, the International Code on Marketing of Breast Milk Substitutes, Department of Health or WHO guidance. If they would like their complaints to be considered under those rules or legislation, they should contact the bodies which administer those rules or legislation directly. The ASA is able to consider complaints about ads under the rules set out in the CAP Code only.*

However, the CAP (Committee of Advertising Practice) Code, states:

*These rules must be read in conjunction with the relevant legislation including the Infant Formula and Follow-on Formula Regulations 2007 and the European Regulation (EC) No 1924/2006 nutrition and Health Claims made on Foods.*

Because of the CAP Code requirement and the ASA's claim to ensure advertising is "legal", Baby Milk Action registers complaints with it as well as Trading Standards. The ASA's failure in practice to consider the legality of formula advertising means it rejects, or even refuses to investigate, complaints about advertising that breaks the Regulations.

For example, under the *Infant Formula and Follow-on Formula Regulations (2007)* and associated *Guidance Notes*, advertising of infant formula (for use from birth) to the public is prohibited. In advertising milk for older babies (such as follow-on milks) or baby clubs, companies cannot make the brand name the focus of their advertising.

Paragraph 48 states:

*In order to achieve compliance, companies will therefore need to ensure that formula advertising does not: promote a range of formula products by making the brand the focus of the advert, rather than specific products (e.g. where specific products are mentioned only in a footnote or in a picture of a tin of formula within the advertisement).*

The ASA rejects complaints citing specifically packshots and text in the small print, as with the Pfizer/Wyeth advertisement shown left and on the front cover.

# Happy birthday ASA?



## Legal?

As Baby Milk Action has pointed out to the ASA several times, it is also incorrect to cite the packshots when dismissing complaints as the labels do not comply with the regulations. Paragraph 51 of the Guidance Notes is clear:

*the specific terms 'infant formula' and 'follow-on formula' should be clearly featured on the packaging, in a font size no smaller than the brand name.*

The terms appearing in the packshots cited by the ASA are typically 20% of the size of the brand name or smaller - the brand is what stands out.

Paragraph 47 of the Guidance Notes is also clear that follow-on formula advertisements:

*should not promote, either directly or indirectly, infant formula, or formula milks/bottle-feeding in general.*

The ASA rejects such complaints - and in the case of Danone's Aptamil television advertisement (bottom right) reported by Baby Milk Action in May 2012, would not even carry out a formal investigation.

The ASA told Baby Milk Action it did not think the claim made for Aptamil formula - "helps support your baby from the inside" - was misleading. Yet babies fed on formula are more likely to become sick than breastfed babies. Indeed, UNICEF published a report in October 2012 suggesting that even small increases in breastfeeding would significantly reduce the number of babies in the UK suffering common illnesses and could save the NHS £40 million/year<sup>1</sup>.

Danone used the slogan in its formula advertisement "30 YEARS Breastmilk Research" (appearing in the shield logo used on the packaging to suggest protection). This is misleading. As UNICEF comments in its report:

*Infant formula marketed in the UK meets international nutritional standards but its composition differs substantially from breastmilk. Its ingredients vary between manufacturers, it does not confer immunity, nor does it promote neurological development as breastmilk does, it has no direct impact on maternal health, and it requires manufacturing, storage and delivery systems with inherent quality control problems.*

The ASA rejected Baby Milk Action's complaints out of hand, though the Guidance Notes state (paragraph 48):

*In order to achieve compliance, companies will therefore need to ensure that formula advertising does not: include pictures or text which directly or indirectly relate or compare products to breastmilk.*



Advertising bottle feeding. Under the UK Regulations, follow-on formula advertising must not "promote bottle feeding". All the same, the ASA rejected complaints about this Danone television advertisement.



The advertisement promoted the range of Cow & Gate formulas, but the ASA referred to the (ambiguous) packshot, footnote and voiceover mention of follow-on formula to dismiss 62 complaints in 2008.



Danone advertising bottle feeding and its Aptamil brand of formula in May 2012. The ASA said it did not think there were: "grounds for formal action under our Code"



Danone idealises its formula by boasting of "30 YEARS breastmilk research". The ASA rejected complaints about this out of hand.

<sup>1</sup> <http://www.unicef.org.uk/BabyFriendly/News-and-Research/News/Breastfeeding-could-save-the-NHS-millions/>



# Happy birthday ASA?

## Legal?

The ASA refused to even publish a ruling on the Danone leaflet shown here, which was found placed in doctors' surgeries without the knowledge or permission of the surgery.



Inside it promotes the Cow & Gate formula brand and offers a free gift for signing up to receive information on infant care, including the option of information on infant milks.



The Guidance Notes for the Regulations state that advertising for mother and baby clubs should not: "feature text or images which relate to pregnancy or the feeding or care of infants under six months."

When the ASA is asked to apply a legality test by looking to the Regulations, in accordance with the CAP Code, it has responded by passing the buck to Trading Standards. Trading Standards responded to Baby Milk Action regarding the Pfizer/Wyeth SMA advertising campaign shown on the cover of this report by passing the buck back to the ASA (11 June 2012):

*No further action is proposed to be taken by this authority regarding this campaign, although I am aware the ASA investigation is ongoing.*

Baby Milk Action has pointed out that advertising that promotes brand names and directs the public to sites where infant formula is promoted are de facto infant formula advertisements and so prohibited (paragraph 47, previous page).

The ASA quickly rejects any suggestion that it should look at the sites given in an advertisement. For example, it has said (25 May 2012):

*The lack of a common definition of what constitutes 'advertising' as far as the regulations and associated guidance means that this matter should be referred to the advertisers' local Trading Standards department as the body responsible for enforcing FSA Guidance on the Infant Formula and Follow-on Formula Regulations 2007.*

This again proves the point that the ASA should not claim it ensures advertising it "legal".

### Advertising to health workers ignored

The ASA refuses point blank to investigate advertising to health workers.

Three different advertisements in the same journal (June 2012 - shown below) placed the featured brand next to breastmilk and ahead of the competitors.

They clearly cannot all be telling the truth. Indeed, the ASA has even upheld complaints against claims that Aptamil and SMA are the best formulas when these have appeared in advertising directed at the public.

But the ASA allows companies to get away with misleading health workers with impunity.



# Happy birthday ASA?



## Decent, honest, truthful?

As well as refusing to consider whether baby milk advertising breaks the law, the ASA also refuses to consider whether it breaks the *International Code of Marketing of Breast Milk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly.

The World Health Assembly, which adopted the Code in 1981, is the highest health policy setting body in the world, made up of the world's health ministries. The Code and Resolutions prohibit all promotion of breastmilk substitutes, feeding bottles and teats, giving health workers responsibility for advising pregnant women and parents. Article 11.3 is addressed to the manufacturers and distributors of breastmilk substitutes and states:

*Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.*

The UK Government supported the adoption of the Code and the subsequent Resolutions referring back to the Code and addressing questions of interpretation and changes in scientific knowledge and marketing practices.

Baby Milk Action has argued that advertising cannot be said to be "*decent, honest and truthful*" if it does not comply the Code. The ASA disagrees, saying it will not investigate violations of the Code and Resolutions, and clearing advertisements that violate these minimum standards.

In a presentation at the *European Platform for Action on Diet and Physical Activity* by Corinna Hawkes, the International Food Policy Research Institute, Washington, noted (February 2007):

- *Self-regulation doesn't reduce the extent and impact of marketing. In fact the volume can increase.*
- *Self-regulation undermines governments' resolve to legislate to protect health.*

Not for nothing did the UN Committee on the Rights of the Child state in its report on the UK in 2008 (not for the first time):

*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.*

50 Legal, decent, honest and truthful

Baby Milk Action complained that the ASA slogan "Legal, decent, honest and truthful" is misleading. The ASA refused to investigate itself.



An expensive business. Figures from dairy farmers suggest that something between 53% and 80% of the price charged for formula goes towards marketing and profits.

Over a thousand people have already signed Baby Milk Action's "No promotion, cheaper formula" petition.

Enforcing the UK Regulations and the International Code and Resolutions will benefit all babies and their families, whether breastfeeding or using formula.

Promoting breastfeeding, protecting families and health professionals from advertising about breastmilk substitutes, and supporting women to breastfeed, are among the most effective early years strategies intended to improve health and tackle inequalities

**Preventing disease and saving resources: the potential contribution of increasing breastfeeding rates in the UK.**

**UNICEF UK**

## Happy birthday ASA? Is there anything to celebrate?

In the UK, the industry-funded Advertising Standards Authority (ASA) claims to ensure advertising is "*legal, decent, honest and truthful*".

But as this report shows this slogan does not stand up.

The advertisement for SMA formula shown on the front cover was reported to the ASA.

The ASA upheld two of the complaints about the advertisement.

- No correction was required.
- No fines were levied.
- The papers that ran the advertisement did not report on the ruling.
- The advertiser did not apologise; in a statement it said it was "*disappointed*".

This state of affairs is actually better than usual: the ASA refuses to even investigate many of the complaints about baby milk advertising registered with it.

Happy birthday ASA? Health advocates who call on it to deliver on its claim to ensure advertising is "*legal, decent, honest and truthful*" have little to celebrate.

Meanwhile, as the ASA cracks open the champagne, in Brazil newspaper headlines are alerting consumers that leading television manufacturers have been fined £1.5 million by the Department for Consumer Protection in the Ministry of Justice for misleading advertising.

Baby Milk Action argues it is time for the UK Government to act on the repeated calls from the UN Committee on the Rights of the Child and act to stop baby milk companies breaking marketing rules.

Baby Milk Action, 34 Trumpington Street, Cambridge, CB2 1QY, UK.  
Tel: 01223 464420.