

IN THE COURT OF HON'BLE CHIEF METROPOLITAN
MAGISTRATE : DELHI

CRIMINAL COMPLAINT CASE NO. 82/E OF 1994
30-11-94

1597
20/11/94

IN THE MATTER OF :
ASSOCIATION FOR CONSUMERS ACTION ON SAFETY AND
HEALTH, A VOLUNTARY ORGANISATION NOTIFIED UNDER
SECTION 21(1)(C) OF THE INFANT MILK SUBSTITUTES,
FEEDING BOTTLES AND INFANT FOODS (REGULATION OF
PRODUCTION SUPPLY AND DISTRIBUTION)- ACT, 1992
HAVING ITS REGISTERED OFFICE AT OCEANA, GROUND
FLOOR, NETAJI SUBHASH MARG, BOMBAY (POST BOX
NO. 2498, BOMBAY -400002)

THROUGH ITS AUTHORISED REPRESENTATIVE DR. ARUN
GUPTA, MD-61, PITAMPURA, DELHI.
////////// COMPLAINANT

VERSUS

NESTLE INDIA LIMITED,
M-5-A, CONNAUGHT CIRCUS,
NEW DELHI-110001
THROUGH ITS MANAGING DIRECTOR ACCUSED
Mr D.E. Ardesiv.

CONCERNED POLICE STATION
SARASWATI VIHAR, DELHI

~~SECTION~~ OFFENCE UNDER SECTION
6 AND 7 OF THE INFANT MILK
SUBSTITUTES, FEEDING BOTTLES
AND INFANT FOODS (REGULATION
OF PRODUCTION, SUPPLY AND
DISTRIBUTION) ACT, 1992 AND
UNDER RULES, 6 AND 7 OF THE
ACT.

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CRIMINAL COMPLAINT UNDER SECTION 200
OF CODE OF CRIMINAL PROCEDURE, 1973.

MOST RESPECTFULLY SHEWETH :

1. That the complainant is a voluntary organisation engaged in the field of Health & Care, Child Welfare and Development and Child Nutrition. The complainant is notified in the office Gazette of India on 27th June 1994 as a voluntary organisation for the purposes of section 21(1)(c) of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (hereinafter called the 'ACT' for the sake of brevity) and Dr. Arun Gupta is duly authorised representative of the said Voluntary Organisation vide its Resolution dated 11th September 1994.

2. That the accused is a company registered under Indian Companies Act, 1956 which is engaged in Manufacturing of Infant Milk Substitute and Infant Foods as defined in Sections 2(g) and 2(f) respectively which is represented by its Managing Director who is responsible to the Company for the conduct of its business.

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That the duly authorised representative of the complainant Dr. Arun Gupta, in order to see the welfare of Infants, on 19.10.1994 purchased one Cardboard container, containing 400 Gms. of infant Food manufactured and marketed by the accused company under the Brand name "CERELAC". The container bears an embossment on its top showing the month and year of manufacturing as May, 1994; Batch No.ECJEJ and price Rs.42/- and one tin Container containing 500 Gms. of Infant Milk Substitute manufactured and marketed by the accused company under brand name "LACTOGEN" vide receipt No.2454 from New Goldy Medicos, Pitampura, Delhi which bears an embossment on its bottom showing the month and year of manufacturing as March 1994, batch No.ERDAJ and price Rs.65/- and few magazines such as "Sarita", Sept. IInd 1994, Graha Shobha October 1994, "Woman's era July (I) 1994, "Parenting October 1994, "Meri Saheli" October 1994 in order to see the advertisement of infant food "CERELAC".

4. That section 6(1) of the Act prohibits any person from producing, supplying or distributing any Infant Milk Substitute or Infant Food unless every container thereof or any label affixed thereto indicates in clear conspicuous and in an easily readable and understandable manner "IMPORTANT NOTICE" in

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Capital Letters ^{and} various statements and one of them should be

"MOTHER'S MILK IS BEST FOR YOUR BABY"

RULE 6 of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Rules, 1993 (hereinafter referred to as "THE RULES") further prescribes that the aforesaid "Important Notice" must be clearly and conspicuously printed on the container label in Capital letters both in English as well as its equivalent in Hindi in Devanagiri Script and in any local language in addition to .

RULE 7 further specifies several additional requirements which are to be prominently printed on the container label as under :-

Particulars of labelling of infant foods.- In addition to the requirements specified by or under the prevention of Food Adulteration Act, 1954 (37 of 1954) and under Section 6 of the Act, the label or the Container of every infant milk substitute or infant food or their advertisements shall conform to the following namely :-

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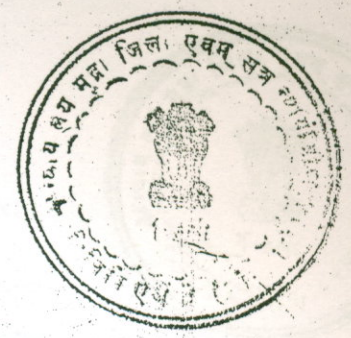
- a) the types of letters used shall not be less than 5 millimetres in size.
- b) the colour of the text printed or used shall be different from that of the background of the label, container or the advertisement, as the case may be.
- c) the text of the particulars shall be prominent and conspicuous in the central panel of the label, container or the advertisement.
- d) it shall indicate -
 - i) that an infant milk substitute or an infant milk food should be prepared appropriately and hygienically besides taking adequate care in clearing of utensils, bottles and teats.
 - ii) a warning against health hazards of inappropriate preparation as under :-
~Infant milk substitutes\Infant foods

Warning \caution - Careful and hygienic preparation of infant food is most essential for health. Do not use fewer scoops than directed, since diluted feeding will not provide adequate nutrients needed by your infant. Do not use more scoops than

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directed since concentrated feed will not provide the water needed by your infant."

- (iii) the approximate composition of nutrients per 100 grams of product including its energy value i.e. calories
- (iv) the storage conditions specifically stating "Store in cool and dry place in an air-tight container" or the like
- (v) the feeding chart and direction for use and instruction for discarding left over feed, the batch number and date of manufacture.
- (vi) instructions for use of measuring scoop (level or heaped) and the quantity per scoop.
- (vii) the prescribed period by which the infant milk substitutes or the infant foods, as the case may be is to be consumed.
- (viii) the Protein Efficiency Ratio (PER) which shall be minimum 2.5 if the product other than the infant milk substitutes and infant foods is

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claimed to have high quality protein.

5. That the duly authorised representative of the complainant perused the containers purchased by him carefully and noticed various violation of law and rules such as :-

a) That on the tin container of Lactogen an infant milk substitutes, the Important Notice is printed as "BREAST MILK IS BEST OF YOUR BABY" instead of "MOTHER'S MILK IS BEST FOR YOUR BABY" and this notice is also not printed in its Hindi equivalent in Devanagiri Script.

b) It does not carry a warning that infant milk substitutes or infant food is not the sole source of nourishment of an infant.

Further more, even the said "Important Notice" in English contains a material and deliberate alteration from the prescribed words as set out in section 6 of the Act and relevant rules. The accused persons have deliberately altered the words "Mother's Milk" and instead have used "Breast Milk", which is a wilful, deliberate and

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Contumacious violation of the Act and Rules.

c) On the Cardboard containers of "CERELAC" a brand infant food, the accused company has not only deliberately used the words "Breast Milk" instead of "Mother's Milk" as prescribed, but have in the immediately following sentence used the words "Mother's Milk", thus trying to wilfully mislead and confuse the parents and other persons and Hindi version is small in size as prescribed and prescribed is 5 M.M., thus, the accused persons have wilfully, deliberately and contumaciously violated the provisions of the Act and Rules.

d) The various advertisements in the Magazines purchased, reflects violation of Rule 6 & 7 of the "Rules" as well as further confuses the parents\ public at large by recommending "CERELAC" in 4th month though the definition of the Infant Food in Section 2(g) of the Act provides after 4 months and its use in 4th months becomes Infant Milk Substitute as defined under section 2(g) of the Act. So the aforesaid advertisements in the various Magazines is confusing and violative of provisions of the Act and Rules including Section 7 of the Act.

That, in addition, in so far as the containers of "CERELAC" brand Infant food are concerned, the prescribed "Important Notice" is not prominently or

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conspicuously displayed in the central panel of the container as prescribed under rule 7(c) of the rules.

The Cardboard container lists this information only on the rear side of the container. Further more, the Cardboard container lists an additional sentence as part of the "Important Notice", which is patently violative of the Act and Rules. The said "Cerelac" containers also clearly violate sub-section (b) and (c) of Section 6(1) of the Act, as the information specified in those two sub-sections is not mentioned on the said container.

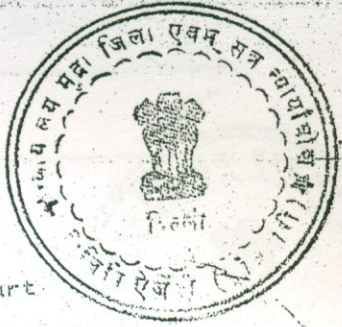
7. That it is, therefore, clear that the accused company as well as all other persons responsible to the company for the conduct of its business have committed offences under section 6(1) and 7 of the Act read with rules 6 & 7 of the rules and thus liable to be punished as per Section 20 of the Act, as they are guilty of the said offences by virtue of section 22 of the Act. In addition, any other persons incharge of or responsible to the accused company for the conduct of its business are also guilty of the offences.

The complainant, therefore, most respectfully pray that this Hon'ble Court may kindly be pleased to take cognizance of the complaint and summon the accused persons and to punish them suitably in

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accordance with the provisions of the Act.

Any other relief(s) which this Hon'ble Court may deem fit and proper be also awarded.

Arjun Gupta

COMPLAINANT

DELHI THROUGH

DATED: 30-11-94

Munish Gupta
(MUNISH GUPTA)
ADVOCATE

LIST OF WITNESSES :

1. COMPLAINANT - DR. ARUN GUPTA.
2. Goldy Medicos (Pvt)
3. Editor of Magazines, Men Saheli, Parenting, Woman's Era, Sants and Granthotha
4. Dr. Tarsan Jindal,
5. Any other material witness(es) with the permission of the Hon'ble Court

5/11/94

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