

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

)	
In the Matter of)	
)	DOCKET NO.
NESTLÉ HEALTHCARE NUTRITION, INC.,)	
a corporation.)	
)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Nestlé HealthCare Nutrition, Inc., a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Nestlé HealthCare Nutrition, Inc. is a Delaware corporation with its principal office or place of business at 12 Vreeland Road, Florham Park, New Jersey 07932-0697.
2. Respondent has labeled, advertised, promoted, offered for sale, sold, and distributed BOOST Kid Essentials to consumers.
3. BOOST Kid Essentials is a “food” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
4. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
5. Respondent has disseminated or caused to be disseminated advertisements for BOOST Kid Essentials, including but not limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions, among others:
 - A. **Television Advertisement:** “Straw Power” (Complaint Exhibits A1 (Storyboard) and A2 (Video))

(A girl pops into frame and takes a big enjoyable sip of Kid Essentials.)

Female Announcer: Introducing NEW Boost Kid Essentials, the only nutritionally complete drink that gives kids the power of immune strengthening probiotics.

ON SCREEN: *L. reuteri Protectis* has been clinically shown to help strengthen the immune system when consumed daily. For more information about clinical trials involving *L. reuteri Protectis*, go to www.kidessentials.com.

(The girl runs along playfully as the straw twirls around her. She encounters a boy who sneezes. The straw quickly forms a protective barrier around her. The girl continues on her way and as she approaches a basketball net, the straw forms stairs for her to step up on.)

ON SCREEN: muscle-building protein

Female Announcer: Plus the power to grow strong – with muscle-building protein and 25 vitamins and minerals.

(She takes a shot and hits a perfect swoosh.)

ON SCREEN: 25 vitamins & minerals

(Cut to straw popping back into drink box. The vortex of wellness swirls around the box, highlighting product attributes.)

ON SCREEN: Immunity strengthening probiotics/7 g protein/25 vitamins & minerals

Female Announcer: NEW Boost Kid Essentials: complete nutrition for your child's healthy growth, and probiotics clinically shown to help strengthen the immune system.

(The straw bends forwards, and probiotics titles emerge, followed by animated probiotic bubbles and a twirling arrow.)

ON SCREEN: Probiotic straw/Clinically shown to help strengthen the immune system

(Close up of the girl grabbing the drink box and enjoying another sip)

Female Announcer: And that means the power to do anything is possible every day.

(She finishes her sip, turns and skips out of frame.)

**ON SCREEN: Boost Kid Essentials Nutritionally Complete Drink
KidEssentials.com....**

B. Product Packaging (Exhibit B)

Front Panel:

BOOST®

Kid Essentials

Nutritionally Complete Drink

Immunity Protection*

Patented PROBIOTIC straw

Nutritionally Complete Drink with PROBIOTICS to **Help Keep Kids Healthy...*

Side Panel:

Complete, Balanced Nutrition for Your Child's

Healthy Growth and Strong Immune System!

BOOST® Kid Essentials provides complete, balanced nutrition for kids 1-13.

Only BOOST Kid Essentials has the vitamins and minerals kids need plus

immune-supporting probiotics and antioxidants to help keep them healthy!...

Talk to your pediatrician about using BOOST Kid Essentials

as a supplement with a meal or as a snack. To learn more about

immunity, probiotics, and antioxidants, visit www.kidessentials.com...

C. Internet Website www.kidessentials.com (excerpt) (Exhibit C)

FAQ:

Q: What exactly do probiotics protect my kids from?

A: Probiotics are healthy bacteria that must be consumed in order to build up in our digestive system - in the lining of the GI tract. While they occur throughout nature, they are less likely to be present in large numbers in our own GI tract, and therefore need to be consumed to derive a benefit. They help balance and keep the levels of bad bacteria in check. Most importantly, they help keep our immune system healthy by increasing disease-fighting antibodies.^{1,2}

References:

1. Tuohy KM *et al.* Using probiotics and prebiotics to improve gut health. *DDT* 2003;8(15):692-700.
2. Isolauri E *et al.* Probiotics: effects on immunity. *Am J Clin Nutr* 2001;73(suppl):440S-50S.

Q: Are probiotics effective against viruses?

A: Yes, certain probiotics have been shown to help fight viruses such as Rotaviral diarrhea.¹ *Lactobacillus reuteri Protectis* (the probiotic found in BOOST Kid Essentials Drink) has been shown to reduce the duration of diarrheal illness in children³ and reduce the number of days that infants miss daycare due to illness.²

References:

1. Szajewska H *et al.* Probiotics in gastrointestinal diseases in children: hard and not-so-hard evidence of efficacy. *J Pediatr Gastroenterol Nutr* 2006;42 (5):454-75.
2. Weizman Z *et al.* Effect of a probiotic infant formula on infections in child care centers: comparison of two probiotic agents. *Pediatrics* 2005;115:5-9.
3. Shornikova AV *et al.* Bacteriotherapy with *Lactobacillus reuteri* in rotavirus gastroenteritis. *Pediatr Infect Dis J.* 1997;16:1103-7.

Q: Are probiotics safe for my young child?

A: Absolutely. The safety and efficacy of probiotic use has been documented for 100 years all around the world. Probiotic supplemented infant formula has been available for over 15 years, in over 30 countries. *Lactobacillus reuteri Protectis* specifically has been thoroughly tested in infants, children and adults and has shown to be safe and effective.

D. **Pamphlet Advertisement to Health Care Practitioners (Exhibit D)**

Front Cover:

The essential facts: a comparison of **BOOST® Kid Essentials Nutritionally Complete Drink** with probiotic immunity protection vs. **PediaSure®.*** **Only BOOST Kid Essentials Drink provides immune-supporting probiotics** in its patented straw to help keep kids healthy....

Inside Pamphlet:

....**The immunity support every kid needs.**

Only BOOST® Kids Essentials Nutritionally Complete Drink delivers **immunity-supporting probiotics**. PediaSure® does not.

Clinical studies of *L. reuteri Protectis* showed the following:

Faster Resolution of Acute Diarrhea In Young Children

[Depiction of a bar graph showing that 81% of patients in a control group had watery diarrhea compared with 26% of patients in the treatment group on day 2 of treatment]

Adapted from Shornikova *et al.*¹

Fewer Absences Among Infants From Child Care

[Depiction of a graph showing a 67% relative risk reduction of absences among infants from child care]

Adapted from Weizman *et al.*²

Fewer Days with Fever Among Infants

[Depiction of a graph showing a 79% relative risk reduction of days of fever among infants]

Adapted from Weizman *et al.*²...

Back Cover:

**Strong growth and immunity
protection every child deserves....**

Only BOOST Kid Essentials Drink's patented straw offers the immune support of the probiotic *L. reuteri Protectis*. Studies in *L. reuteri Protectis* demonstrate the ability to support the body's defenses, resulting in reduced sick days, fever, and the duration of diarrhea.^{1,2}...

1. Shornikova A *et al.* *Lactobacillus reuteri* as a therapeutic agent in acute diarrhea in young children. *JPGN* 1997;24(4):399-404.
2. Weizman Z *et al.* Effect of a Probiotic Infant Formula on Infections in Child Care Centers: Comparison of Two Probiotic Agnes. *Pediatrics* 2005;115(1):5-9.

E. People Magazine Advertisement (Exhibit E)

First Page:

Do your kids
have the
power?

[Depiction of Boost Kid Essentials package with the probiotic straw,
which reads:

NEW!

BOOST

Kid Essentials

Nutritionally Complete Drink

Immunity Protection*

Patented PROBIOTIC Straw

*Nutritionally Complete Drink

with PROBIOTICS to Help

Keep Kids Healthy]

Second Page:

The power of immune-strengthening probiotics^{1,2}
Probiotic straw to help keep kids healthy

[Depiction of the probiotic straw (continued from the previous page)
forming a complete circle around a girl, while a boy sneezes in her
direction]

1. Weizman Z *et al.* Effect of a Probiotic Infant Formula on Infection in Child Care Centers: Comparison of Two Probiotic Agents. *Pediatrics* 2005; 115(1) 5-9.
2. Shornikova AV *et al.* *Lactobacillus reuteri* as a therapeutic agent in acute diarrhea in young children. *JPGN* 1997;24(4);399-404.

Third Page:

The power to grow strong
25 vitamins & minerals
7g of muscle-building protein

[Depiction of the probiotic straw (continued from the previous page)
forming stairs for the girl to climb, as she tosses a basketball into a
basketball hoop]

Fourth Page:

The power
to do anything!
Every day.

NEW BOOST® Kid Essentials
Nutritionally Complete Drink:

- Immune-strengthening probiotics
in the straw
- 25 vitamins & minerals + 7g of
protein to support healthy growth
- Kid preferred taste vs. Pediasure®...

6. Through the means described in Paragraph 5, including the statements and depictions contained in the advertisements attached as Exhibits A through E, among others, respondent has represented, expressly or by implication, that drinking BOOST Kid Essentials:

- A. Prevents upper respiratory tract infections in children;
- B. Strengthens the immune system, thereby providing protection against cold and flu viruses; and
- C. Reduces absences from daycare or school due to illness.

7. Through the means described in Paragraph 5, including the statements and depictions contained in the advertisements attached as Exhibits A through E, among others, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. Through the means described in Paragraph 5, including the statements and depictions contained in the advertisements attached as Exhibits A, C, and D, among others, respondent has represented, expressly or by implication, that clinical studies prove that drinking BOOST Kid Essentials:

- A. Reduces the general incidence of illness in children, including upper respiratory tract infections;
- B. Reduces the duration of acute diarrhea in children up to the age of thirteen; and
- C. Strengthens the immune system, thereby providing protection against cold and flu viruses.

10. In truth and in fact, clinical studies do not prove that drinking BOOST Kid Essentials reduces the general incidence of illness in children, including upper respiratory tract infections, reduces the duration of acute diarrhea in children up to the age of thirteen, or strengthens the immune system, thereby providing protection against cold and flu viruses. Therefore, the representations set forth in Paragraph 9 were, and are, false or misleading.

11. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this _____ day of _____, 2010, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary