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A subsidiary of Nestlé S.A., the world's largest food and nutrition company, has agreed to drop allegedly deceptive advertising claims about the health benefits of its children's drink BOOST Kid Essentials, as part of a settlement resolving the Federal Trade Commission's first case challenging advertising for probiotics.

The FTC complaint charges that from fall 2008 to fall 2009, Nestlé HealthCare Nutrition, Inc. made deceptive claims in television, magazine, and print ads that BOOST Kid Essentials prevents upper respiratory tract infections in children, protects against colds and flu by strengthening the immune system, and reduces absences from daycare or school due to illness.

BOOST Kid Essentials is a nutritionally complete drink intended for children ages 1 to 13. The probiotics in BOOST Kid Essentials are embedded in a straw that comes with the drink, which was prominently featured in ads for the product. Probiotics are live, beneficial bacteria that are found naturally in many foods, and they are known for aiding digestion and fighting harmful bacteria.

"Nestlé's claims that its probiotic product would prevent kids from getting sick or missing school just didn't stand up to scrutiny," said David Vladeck, Director of the FTC's Bureau of Consumer Protection. "Parents want to do right by their kids, and the FTC is helping them by monitoring ads and stopping those that are deceptive."

The advertisements challenged by the FTC featured the drink's probiotic straw. In one ad, the straw jumped out of the drink box, formed a protective barrier around a girl as she encountered a sneezing boy, and then formed steps allowing her to reach a basketball hoop and shoot a ball into the net.

The ads falsely claimed that BOOST Kid Essentials is clinically shown to reduce illness in children, to protect from colds and flu by strengthening the immune system, and to help children up to age 13 recover more quickly from diarrhea, the FTC charged.

FTC File No. 092 3087

Under the proposed settlement, Nestlé HCN has agreed to stop claiming that BOOST Kid Essentials will reduce the risk of colds, flu, and other upper respiratory tract infections unless the claim is approved by the Food and Drug Administration. Although FDA approval of health claims generally is not required for compliance with the FTC Act, in this case, the FTC determined that requiring FDA pre-approval before Nestlé HCN makes claims that certain products prevent or reduce the risk of upper respiratory tract infections will provide clearer guidance. In turn, this will facilitate Nestlé HCN's compliance with the proposed settlement order and will make the order easier to enforce.

Nestlé HCN also has agreed to stop claiming that BOOST will reduce children's sick-day absences and the duration of acute diarrhea in children up to age 13, unless the claims are true and backed by at least two well-designed human clinical studies.

The FTC's proposed settlement also prohibits Nestlé HCN from making any claims about the health benefits, performance, or efficacy of any probiotic and nutrition drinks that it sells at retail, unless the claims are true and backed by competent and reliable scientific evidence. It also bars the company from misrepresenting any tests or studies.

The FTC vote to approve the administrative complaint and proposed consent agreement was 5-0. The FTC will publish an announcement regarding the agreement in the Federal Register shortly. The agreement will be subject to public comment for 30 days, beginning today and continuing through August 16, 2010, after which the FTC will decide whether to make it final. To file a public comment, please click on the following hyperlink:

<https://ftcpublishcommentworks.com/nestle>. Copies of the complaint, the proposed consent agreement, and an analysis of the agreement to aid in public comment are available from both the FTC's website at <http://www.ftc.gov> and the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

The Commission issues an administrative complaint when it has reason to believe that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the respondent has actually violated the law. The consent agreement is for settlement purposes only and does not constitute admission by the respondent of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to \$16,000.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online [Complaint Assistant](#) or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,800 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's website provides free information on a variety of [consumer topics](#).

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(Nestle)

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