

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission

Question No: 104

Topic: Promotion of processed foods including milk formula for infants and young children - False or misleading health and nutrition claims

Reference: Written

Senator: Kakoschke-Moore, Skye

Question:

Nutritional and health claims are prohibited on infant formula under food regulations. Australian food standards (FSANZ Standard 2.9.1) prohibit health or nutrition claims on infant formula (Clause 3). There is no evidence that commercial milk formula products for children over 12 months of age are necessary or at all beneficial for healthy children, particularly compared to ongoing breastfeeding. Toddler formula/milk is being cross marketed with infant formula and contains implied claims for health and nutrition benefits despite there being no evidence of benefit, and possible harm from excessive nutrients (see WHO 2013 and WHA 2010). As shown in a recent publication in a leading maternal and child nutrition journal (Berry et al, 2016, Maternal and Child Nutrition), the milk formula industry is rampantly promoting their products in Australia by making allegedly false and misleading claims and misrepresentations about these products through implied nutrition and health claims in toddler milk formula product packaging and labelling. Despite this, FSANZ and ACCC have taken no action against such claims, and FSANZ, ACCC and the patents office cannot determine which of them has the responsibility to police this prohibition.

Does ACCC view toddler formula/milk promotion which imply health or nutrition advantages such as in the product name, trademark or logo as breaching Australian food standard regulations banning health and nutrition claims, or consumer law prohibitions of misleading and deceptive conduct or false representations to consumers? Why has ACCC or FSANZ not taken action against the promotion of toddler formula/milks through false or misleading health and nutrition claims, when all such cross branded milk formula products are effectively promoting infant formula which is packaged and labelled to resemble toddler formula, and such claims are strictly prohibited for infant formula?

Answer:

Food Standards Australia New Zealand (FSANZ) and the State and Territory food authorities are the relevant agencies to direct concerns in relation to the Australian food standards. FSANZ and/or the Department of Health are the appropriate organisations to consider whether the standards adequately regulate the matters raised.

The ACCC is aware of concerns from some over the marketing of certain milk formulas for children over 12 months, but has not to date identified matters that support action under the Australian Consumer Law. We would be pleased to consider specific examples of marketing or labels and relevant information.