

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Stephanie Surratt, individually and on behalf
of all others similarly situated,

Plaintiff,

- against -

CVS Pharmacy, Inc.,

Defendant

1:22-cv-00650

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge:

1. CVS Pharmacy, Inc. (“Defendant”) manufactures, labels, markets, and sells infant formula with iron to children between 9 and 18 months, identified as “Toddler Beginnings,” under the CVS Health brand (the “Product”).



I. BASICS OF INFANT NUTRITION

2. According to the World Health Organization (“WHO”) and private and public health groups, breast milk is the “gold standard” for infant nutrition.

3. The American Academy of Pediatrics (AAP) recommends “exclusive breastfeeding for the first 6 months of life with the addition of complementary foods and the continuation of breastfeeding until at least 12 months of age.”¹

4. Infant formula with added iron is the accepted alternative where breastfeeding is not an option. 21 C.F.R. § 106.3 (defining infant formula as “a food which purports to be or is represented for special dietary use for infants [0-12 months] by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.”).

5. The transition beyond the first twelve months is “critical for establishing healthy dietary preferences and preventing obesity in children.”²

II. INCREASED BREASTFEEDING RESULTS IN COMPANIES SEEKING NEW WAYS TO SELL INFANT FORMULA

6. Since 2003, rates of breastfeeding have increased significantly, resulting in a decrease in sales of infant formula.

7. To make up for declining sales of infant formulas, companies have introduced products marketed as “transition formulas,” “follow-on formulas,” “weaning formulas,” “toddler milks,” and “growing-up milks” (“GUMs”) (collectively, “Transition Formulas”) to children between 12 and 36 months old.³

¹ *Id.*

² Jennifer L. Harris, and Jennifer L. Pomeranz, "[Infant formula and toddler milk marketing: opportunities to address harmful practices and improve young children's diets.](#)" Nutrition Reviews (2020).

³ Jennifer L. Pomeranz, Maria J. Romo Palafox, and Jennifer L. Harris. "[Toddler drinks, formulas, and milks: Labeling practices and policy implications.](#)" Preventive medicine 109 (2018): 11-16 (citing American Academy of Pediatrics (AAP) Committee on Nutrition and World Health Organization (WHO) findings).

8. U.S. Nielsen data shows advertising spending on transition formula quadrupled between 2003 and 2015, with sales increasing almost threefold.

9. The formula trade group, the Infant Nutrition Council of America (“INCA”), recommends that “transition formulas,” such as Toddler Beginnings, be used to fill “nutrition gaps,” beyond 12 months.⁴

10. However, a global consensus of pediatric health organizations, including the AAP Committee on Nutrition and the relevant Sub-Committees of the WHO, and government bodies, disagree with INCA’s conclusion, and advise that beyond 12 months, nutritional needs should be met with whole cow’s milk, water and healthy whole foods as part of a balanced diet.⁵

11. Companies like Defendant capitalize on consumers’ familiarity and acceptance of federally-approved infant formula and continue selling them the same or substantially identical products even when their children are no longer infants, defined as zero to twelve months old.

12. The identical labeling elements ride the coattails of the carefully regulated and trusted infant formula to drive sales.

13. Defendant’s Toddler Beginnings (top) is advertised and marketed in a way that is similar and parallel to its Infant Formula (bottom), through common and parallel labeling formats, images, design, type size, fonts, claims, call-outs and graphics.

⁴ Olga Khazan, The Ominous Rise of Toddler Milk, [Baby-formula sales are slumping, so the companies that make it have turned to supplements for 3-year-olds](#), December 29, 2020.

⁵ AAP Committee on Nutrition, 1988. Follow-on formulas follow-up or weaning formulas. *Pediatrics* 83, 1067 1989; World Health Organization, July 17, 2013. [Information concerning the use and marketing of follow-up formula](#).



14. The representations further the incorrect impression that the Toddler Beginnings is what children should be fed in “next stage” beyond infancy.

Infant Formula

Toddler Beginnings

Infant Formula With Iron – Milk-Based Powder

Infant Formula With Iron – Milk-Based Powder

0 – 12 Months

Stage 2: 9-18 Months

Experts recommend DHA & Choline

DHA, Iron & Choline to Help Nourish the Brain

Nutrients found in breast milk

Balanced Nutrition

Neuro Complete

Neuro Support

Supports Brain Development

Supports Brain Development

- Cognitive
- Social
- Motor
- Communication

- Cognitive
- Social
- Motor
- Communication

Stuffed Duck

Building Blocks With Letters

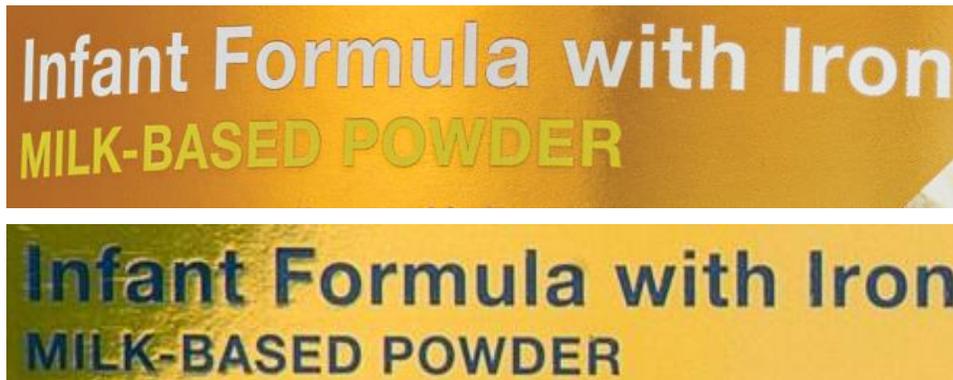
Non-GMO†

Non-GMO†

† Ingredients not genetically engineered

† Ingredients not genetically engineered

15. The Product’s name, “Infant Formula With Iron – Milk-Based Powder” (top) is deceptive and misleading because it is confusingly similar and identical to the name of Defendant’s infant formula, “Infant Formula – Milk-Based Powder With Iron” (bottom).



16. These identical names mislead caregivers by not telling them how the Product may differ from the Infant Formula.

17. While the Infant Formula product contains a picture of a stuffed duck, the Product contains building blocks containing letters of the alphabet.

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