

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

EASTERN DIVISION

Melissa Garza individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Nestle USA, Inc.,

Defendant

1:22-cv-03098

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. Nestle USA, Inc. (“Defendant”) manufactures, markets, and sells milk-based powder with iron (“infant formula”) to non-infants, designated as Gerber Good Start Grow (“Product”).

I. MISLEADING REPRESENTATIONS THAT GERBER GOOD START GROW IS NUTRITIONALLY APPROPRIATE

2. 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.”

3. 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.”).

4. The transition beyond the first twelve months is “critical for establishing healthy

dietary preferences and preventing obesity in children.”¹

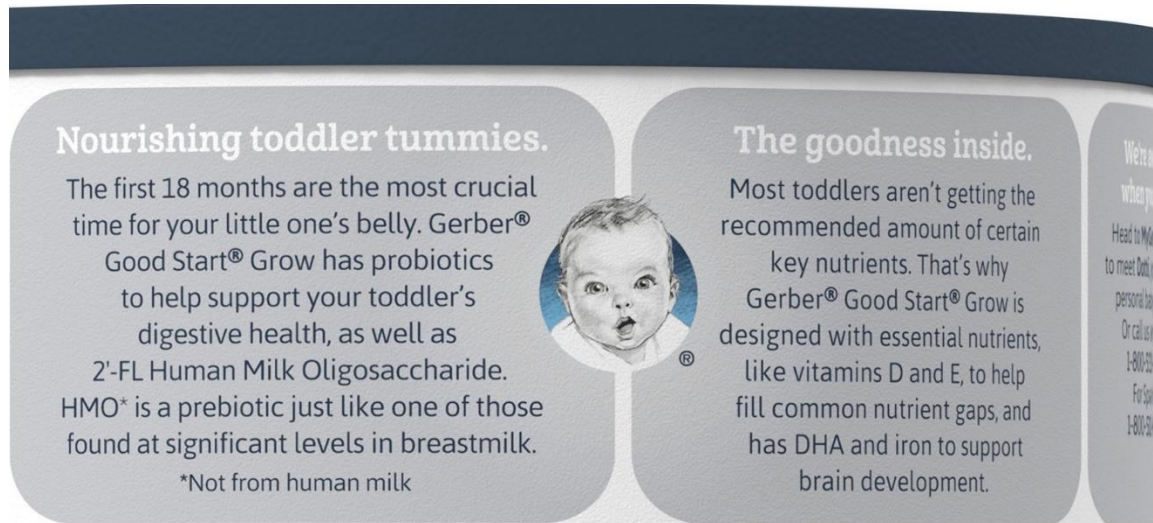
5. Defendant’s Good Start Grow, marketed for children between twelve and twenty-four months old, recognizes the importance of this period in early development.

Nourishing toddler tummies.

The first 18 months are the most crucial time for your little one’s belly. Gerber Good Start Grow has probiotics to help support your toddler's digestive health, as well as 2'-FL Human Milk Oligosaccharide. HMO is a prebiotic just like one of those found at significant levels in breastmilk.

The goodness inside.

Most toddlers aren’t getting the recommended amount of certain key nutrients. That’s why Gerber Good Start Grow is designed with essential nutrients, like vitamins D and E, to help fill common nutrient gaps, and has DHA and iron to support brain development.



6. The formula trade group, Infant Nutrition Council of America, which includes the manufacture of Gerber Good Start Grow, stated that “transition formulas” can be used to fill nutrition gaps beyond 12 months.²

¹ 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).

² 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.

7. However, a global consensus of pediatric health organizations, including the American Academy of Pediatrics (AAP) Committee on Nutrition and the relevant Sub-Committee of the World Health Organization (WHO) reached the opposite conclusion.

8. These groups advise that beyond twelve months, children's nutritional needs should be met with whole cow's milk, water, and healthy whole foods as part of a balanced diet, and that transition formula "is not recommended."³

II. DEFENDANT'S GOOD START GROW IS IDENTICAL TO ITS INFANT FORMULA EVEN THOUGH IT IS NOT RECOMMENDED FOR DIETARY NEEDS OF TARGET GROUP

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

10. 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 twelve and thirty-six months old.⁴

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

12. Companies like Defendant capitalize on consumers' familiarity and acceptance of federally approved infant formula and continue selling it to them when their children are no longer infants, defined as zero to twelve months old.

³ 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.](#)

⁴ 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).

13. Defendant's Good Start Gentle Pro Infant Formula (left) is advertised and marketed in a way that is near-identical to its Good Start Grow "Toddler Drink" ("transition formula"), through common labeling formats, images, design, type size, fonts, call-outs, and graphics.



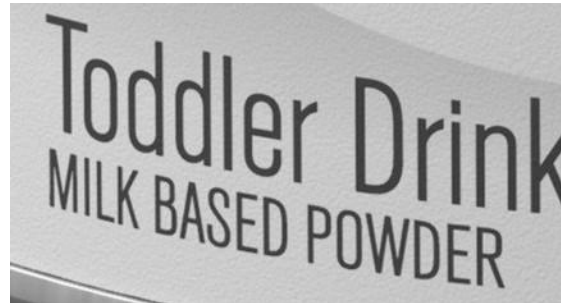
14. This State's regulations for labeling are identical to those established by the Food and Drug Administration ("FDA") and require companies to identify and describe a product in a truthful way that distinguishes it from other products.

15. The Infant Formula and Toddler Drink have identical statements of identity: “Milk Based Powder.”

Infant Formula with Iron



Transition Formula



16. The identical statement of identity for the Toddler Drink fails to indicate how it is different from the Infant Formula.

17. This harms caregivers purchasing these items for children because the nutritional requirements of infants are different from children between twelve and twenty-four months.

18. The similarity of the representations continue:

Infant Formula

0 – 12 Months
For complete nutrition & advanced comfort
Everyday Probiotics;
Digestive Health & immune support
Brain & eye development; DHA

Easy to digest – Comfort Proteins
2’ – FL; HMO Immune Support

Toddler Drink

12 – 24 Months
Tailored nutrition for toddlers
Everyday Probiotics;
Digestive Health & immune support
Brain development; DHA & Iron
Strong bones & teeth; Calcium & Vitamin D

2’ – FL; HMO Immune Support

19. Through the similar representations, caregivers get the incorrect impression that the Gerber Good Start Grow Toddler Drink is the “next step” for children beyond infancy.

20. The identical labeling elements further this impression and ride the coattails of the

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