

## **Mead Johnson, Maker of Enfamil, Loses Multi-Million Dollar False Advertising Case Against Store-Brand Infant Formulas**

*Store-brand formulas found in federal court to be nutritionally equivalent to and confer the same developmental benefits as the more expensive national brands*

**GORDONSVILLE, VA., December 2, 2009**—[PBM Products, LLC](#), a leading infant formula company that supplies store-brand infant formulas to Walmart, Sam's Club, Target, Kroger, Walgreens, and other retailers, has received a favorable jury verdict and a \$13.5 million damages award in its false advertising lawsuit against Mead Johnson & Co., the operating subsidiary of Mead Johnson Nutrition Company (NYSE: MJN) (“Mead Johnson”), the makers of the national-brand Enfamil® LIPIL® Infant Formula. Mead Johnson is 83 percent-owned by Bristol-Myers Squibb.

PBM’s lawsuit claimed that Mead Johnson engaged in false and misleading campaigns against PBM’s competing store-brand of infant formulas, suggesting they do not provide the same nutrition as Mead Johnson’s brands. PBM’s store-brand infant formulas cost up to 50 percent less than Enfamil® LIPIL®. The \$13.5 million in damages awarded by the jury in the United States District Court for the Eastern District of Virginia is one of the largest damages awards ever for a false advertising case.

“This decision by a jury of the people confirms that Mead Johnson’s ads have been false in suggesting that there is a nutritional difference between our store-brand formula products and their products, when in fact the only major difference is price,” said PBM CEO [Paul B. Manning](#). “Despite Mead Johnson’s scare tactics, parents are assured that PBM’s formula products are as high quality and nutritious as Mead Johnson’s.”

U.S. District Court Judge James R. Spencer issued his written rulings yesterday following the November 10<sup>th</sup> jury verdict. Judge Spencer’s written rulings permanently enjoined Mead Johnson from making any false statements concerning PBM's infant formula, including the claims Mead Johnson previously made in Enfamil advertising that "It may be tempting to try a less expensive store brand, but only Enfamil LIPIL is clinically proven to improve brain and eye development," and "there are plenty of other ways to save on baby expenses without cutting back on nutrition." The Court also ordered Mead Johnson to retrieve from the public domain all advertising or promotional materials containing these or any other false claims about PBM's store brand infant formula.

The details of the decision and the complaint are posted online in full at:

- [http://www.pbmproducts.com/docs/Order\\_Laches.pdf](http://www.pbmproducts.com/docs/Order_Laches.pdf)
- [http://www.pbmproducts.com/docs/PBM\\_Complaint\\_MJ\\_III\\_LIPIL.pdf](http://www.pbmproducts.com/docs/PBM_Complaint_MJ_III_LIPIL.pdf)

The nutritional supplements under examination in the case are two fats, DHA (docosahexaenoic acid) and ARA (arachidonic acid), which Mead Johnson calls “LIPIL®” solely for marketing purposes and touts as promoting infant brain and eye development. PBM’s claim focused on Mead Johnson’s direct mailing to more than 1.6

million parents of an alarming blurry picture of a child's [cartoon duck](#) next to a clear picture of the same image which suggested that anything other than the Enfamil LIPIL® blend of ingredients is inferior and will result in poor eye and brain development. Other parts of the false advertising campaign consist of statements that only Enfamil LIPIL has been proven to confer visual and mental benefits on infants, and store-brand formulas are a “cut-back in nutrition” compared to Enfamil.

PBM successfully argued that these advertisements were false and misleading especially since PBM store-brand infant formulas have the same nutrients at the same levels as Enfamil. PBM infant formulas are formulated to contain DHA and ARA, and are sourced from the same supplier in amounts which equal or exceed the DHA and ARA in Mead Johnson's Enfamil LIPIL®.

This decision marks the third time PBM Products has sued Mead Johnson for false advertising claims. On the prior occasions Mead Johnson admitted that it made false claims about PBM's products. It is also the first false advertising case to focus on the issue of DHA and ARA nutritional ingredients in formula, which were introduced into the market in 2003 and have become a staple in recent years by many brands as key components for infant development.

“This jury verdict should send a significant and clear message to Mead Johnson about the way it conducts marketing and advertising for its brands,” said Manning. “This lawsuit also demonstrates our complete commitment to defending our products and the valuable brands of our retail partners.”

“As a parent and supporter of children's medical research, I take a personal responsibility in assuring our customers that the products we produce are healthy and nutritionally equivalent to brand names like Enfamil® LIPIL®. It is important, especially now, for parents to know that there are lower priced yet highly nutritious store-brand formulas that will provide the same benefit to their children as any national brand name formula product,” Manning added.

The U.S. infant formula market is estimated at \$3.4 billion and the global market is estimated at \$7.9 billion.

All of PBM's formulas, and for that matter all of U.S. infant formulas, are subject to the exacting standards of the U.S. Food and Drug Administration (FDA), pursuant to the Infant Formula Act of 1980. This legislation vested FDA with the authority to ensure that all infant formula products sold in the United States provide the necessary levels of identified nutrients required for the growth of healthy babies. For more information, visit this FDA [link](#).

PBM Products was represented by the law firm [Kramer Levin Naftalis & Frankel LLP](#). Partners from the firm's advertising practice, Harold P. Weinberger and Jonathan M. Wagner in New York, led the team.

