

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU

In the Matter of

Assurance No. 18-087

**Investigation by BARBARA D. UNDERWOOD,
Attorney General of the State of New York, of**

Abbott Laboratories

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law Article 22-A into Abbott Laboratories’ surveying of new mothers regarding their breast-feeding and formula feeding habits. This Assurance of Discontinuance (“Assurance”) contains the findings of OAG’s investigation and the relief agreed to by OAG and Respondent Abbott Laboratories, Inc. for its Abbott Nutrition Products division (“Abbott”), whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

OAG’s FINDINGS

1. Abbott Nutrition is a division of Abbott Laboratories, an Illinois company, headquartered at 100 Abbott Park Road, Abbott Park, Illinois 60064-3500, and is authorized to do business in New York State.
2. For more than 50 years, Abbott has conducted monthly surveys of new mothers regarding their breast-feeding and formula feeding habits.
3. Initially, Abbott’s surveys were sent under the name “Research Institute of

Mother and Child Care,” which was widely known as the “Ross Mothers Survey,” a reference to Ross Laboratories, a predecessor to Abbott’s nutrition division, and attributed to Abbott Laboratories. In or about 2011, Abbott changed the name of the survey to “National Institute of Infant Nutrition” and began sending the surveys with the following logo:

NATIONAL INSTITUTE
of
INFANT NUTRITION

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Dear [REDACTED],

The National Institute of Infant Nutrition conducts monthly surveys to understand nutrition for infants. This research has been on-going for fifty years and gathers information about the breast-feeding and formula-feeding habits of American households, based on the age of their babies.

You have been randomly selected to be part of a small group of parents who were sent this survey. Please be assured that we will not sell your name to anyone. And because we combine your answers with those of other parents, your answers will remain confidential. The survey should take only a few minutes to complete. Please answer the questions for the youngest infant in your home. You may return your completed survey in the enclosed postage-paid envelope. We greatly appreciate your time in helping us with this important research.

Best wishes to your family,

Janet M. Jones

Janet M. Jones
Research Director

Please return completed
questionnaire by -

May 31, 2017

1. Please enter today's date: _____ 2 0
(month) (day) (year)
2. Do you have a baby? Yes No - You are finished, please return the survey in the enclosed envelope.
3. Please enter your youngest baby's birth date: _____ 2 0
(month) (day) (year)
4. How long did you carry your youngest baby?
 37 weeks or more 34-36 weeks 32-33 weeks 28-31 weeks Less than 28 weeks
5. What did your youngest baby weigh at birth? Less than 5 lbs, 9 oz 5 lbs, 9 oz or more
6. Was your youngest baby in a neonatal intensive care unit (NICU) in the hospital?
 No Yes How long was your baby in the NICU? (Enter number of days) _____
7. Was your youngest baby a: Single Birth Twin Triplet Quadruplet or more

4. Below the logo is a short letter that, among other things, asks the survey recipient to complete the survey. The first paragraph of the letter states: “The National Institute of Infant Nutrition conducts monthly surveys to understand nutrition for infants. This research has been on-going for fifty years and gathers information about the breast-feeding and formula-feeding habits of American households...”

5. The letter is signed by an individual who is identified in the signature block as “Research Director.” There is no entity by the name of “National Institute of Infant Nutrition.” Rather, Abbott used the name until 2017 solely in connection with its market surveys.

6. The surveys seek information on a number of topics, including the recipient’s demographics and habits for feeding his or her baby, including whether the baby has been breast-fed or formula-fed, the brand of formula used, and the amount of formula or breast milk fed to the baby on the preceding day. The survey also seeks information about the baby, including its birthdate and weight, number of weeks in utero, and if, and how long, it was in the neo-natal intensive care unit. Abbott aggregates and anonymizes survey responses, and survey respondents are not solicited with follow-up advertising.

7. At various times Abbott has shared some of its survey data with independent academic researchers including the Department of Health and Human Services, the Centers for disease Control, and U.S. Department of Agriculture. Abbott, however, gathers the data to further its own business objectives, including generating data for analysis of a variety of components of the infant-formula market.

8. From March 2015 through April 2017, Abbott sent more than 225,000 of the surveys described above to New York consumers.

9. Further, during the same period, Abbott sent follow-up surveys to more than 16,000 of the original survey recipients using the same logo of the National Institute of Infant Nutrition.

10. Commencing in 2017 and based on the concerns expressed by the OAG, Abbott voluntarily ceased sending its marketing surveys using the "National Institute of Infant Nutrition" logo and contracted with a third-party market research firm to conduct its market research and surveys. The survey now discloses that it is being conducted for market research purposes.

11. Abbott has fully cooperated with the OAG's inquiry.

12. New York Executive Law § 63(12) prohibits persons or business entities from engaging in repeated fraudulent or illegal acts or otherwise demonstrating persistent fraud or illegality in the carrying on, conducting or transaction of business.

13. New York General Business Law ("GBL") Article 22-A prohibits deceptive acts or practices (GBL § 349), and false advertising in the conduct of any business, trade or commerce in this State (GBL § 350).

14. OAG finds that Respondent's conduct, as described in paragraphs 3 through 9, is in violation of Executive Law § 63(12) and General Business Law Article 22-A.

15. Respondent admits the OAG's Findings, paragraphs (1)-(11) above, however it neither admits nor denies that its actions violated the statutory provisions cited above, and nothing in this paragraph affects Respondent's right to take positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

16. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and General Business Law Article 22-A based on the conduct described above during the period of 2014 through the present.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

17. Respondent shall not engage in violations of any applicable laws, including but not limited to Executive Law § 63(12) or General Business Law Article 22-A.

Programmatic Relief:

Prohibitions

18. Abbott shall not send surveys to New York consumers seeking information about infant nutrition or any other matter that misrepresents, directly or by implication, the purpose for which the information is sought, or the entity seeking it.

19. Abbott shall not represent, directly or by implication, including through the use of a logo, that any survey is being conducted by a scientific organization or is being gathered for scientific study, unless that is, in fact, the case.

Affirmative Obligations

20. In its surveys to New York consumers seeking information about infant nutrition or any other matter, Abbott shall:

- a. At the top of any consumer survey, clearly and conspicuously disclose either its name, or the name of any third party conducting the market research on its behalf; and
- b. clearly and conspicuously disclose the purpose for which the survey information is sought.

21. Abbott shall require any third party with which it contracts for marketing surveys to comply with the requirements set forth in paragraphs 18 through 20.

Monetary Relief:

22. Respondent shall pay to the State \$50,000 within ten business days of the effective date of this Assurance by wire transfer. Such funds shall be retained by the OAG as costs.

MISCELLANEOUS

Subsequent Proceedings:

23. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG against Abbott.

24. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 33, the Respondent expressly agrees and acknowledges:

- a. that any statute of limitations or other time-related defenses against an action or proceeding brought by the OAG are tolled from and after the effective date of this Assurance;

- b. that the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. that any civil action or proceeding brought by the OAG must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

25. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

26. To the extent not already provided under this Assurance, Respondent shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance and to effectuate the terms of this Assurance.

Effects of Assurance:

27. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of Respondent's practices or procedures, and the Respondent shall make no representation to the contrary.

28. This Assurance is not intended for use by any third party in any other proceeding.

29. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

30. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

31. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

32. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 18-087, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Executive Vice President, General Counsel and
Secretary, Abbott Laboratories, 100 Abbott Park Road, Abbott Park, Illinois
60064-3500.

If to the OAG, to: Amy Schallop, or in her absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau.

Representations and Warranties:

33. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Respondent and its counsel and OAG's own factual investigation as set forth in Findings, paragraphs (1)-(9) above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

34. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

35. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles:

36. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

37. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

38. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

39. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

40. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

41. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

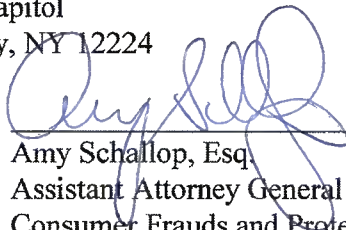
42. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

43. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

44. The effective date of this Assurance shall be ^{November 5} ~~October~~ 5, 2018.

BARBARA D. UNDERWOOD
Attorney General of the State of New York
The Capitol
Albany, NY 12224

By:



Amy Schallop, Esq.
Assistant Attorney General
Consumer Frauds and Protection Bureau

Jane M. Azia

Jane M. Azia, Esq.

Bureau Chief

Consumer Frauds and Protection Bureau

ABBOTT LABORATORIES for its ABBOTT
NUTRITION PRODUCTS DIVISION

By:

John M. Wunderlich

John M. Wunderlich

Senior Counsel

Abbott Laboratories

STATE OF Illinois)
)
COUNTY OF Lake) ss.:

On this 2 day of November, 2018, [Officer Name], known personally to me to be the [Title] of Abbott Laboratories, appeared before the undersigned and acknowledged to me that he/she, as such officer and being authorized so to do, executed the within instrument for the purposes therein set forth, on behalf of the RESPONDENT, by his/her signature on the instrument as such officer.

Sworn to before me this
2 day of November, 2018

Debra Kamm
NOTARY PUBLIC

