

A decorative geometric pattern in the top corners of the page, consisting of a grid of hexagons and triangles. Some hexagons are filled with a lighter gray color, while others are empty. The triangles are also arranged in a grid-like fashion, some pointing up and some pointing down. The pattern is composed of thin black lines and small black dots at the vertices.

Part 5

# **Unfair Treatment: Health risks posed by corporates**

## Chapter 10: Tasty Bhi, Healthy Bhi! Maggi's *Instant* Violation of Consumer Rights

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Just when everyone thought that the case against Nestle with respect to Maggi noodles has been successfully concluded, the Supreme Court in January 2019 vacated its stay and allowed the National Consumer Disputes Redressal Commission (NCDRC) to continue its proceedings against Nestle India. The Ministry of Consumer Affairs, Government of India had filed a class action suit in August 2015 under Section 12-1-D of the Consumer Protection Act, 1986 alleging unfair trade practices, false labelling and misleading advertisements by Nestle. It has sought a compensation of Rs 640 crore. The class action is rooted in the case of alleged high lead content that is “unsafe and hazardous” for human consumption and the presence of Monosodium Glutamate (MSG) in Nestlé’s popular Maggi instant noodles.

This Supreme Court order is significant for two reasons. Firstly, it is for the first time in the nearly three-decade-old Consumer Protection Act, that the Government of India has taken action under Section 12-1-D, under which both the Centre and states have powers to file complaints. In the petition filed before the NCDRC, the Ministry

had charged that Nestle India has misled consumers claiming that its Maggi noodle was healthy - “Tasty bhi healthy bhi.” The Government reiterated that the main issue in the class action was not whether the noodles were harmful or not, but that the company misled the consumers by alleged **unfair trade practices, false labelling and misleading advertisements**. The significance lies in the fact that the success of this action has potential to pave the way for the government playing its role as guardian of the rights of consumers in a powerful way, given that a lot more businesses do engage in labelling citing ‘local practices’ as reasons. Secondly, it helped quash a narrative that Nestle has successfully been able to create and sustain in the public media about it actually being a victim of poor testing capacity of the Food Safety and Standards Authority of India (FSSAI). It has not even disclosed on its own website what actually happened in the year 2015. Given that Nestle has been selectively publishing the truth so as to help protect its brand image, it is important that the truth be unearthed and made available to the wider public and children, who have these rights as consumers.

### Maggi in the Indian Public Imagination

With its USP of being an instant meal, Maggi has through its narrative building and advertising over the years, assured audiences and users that it was a complete nutritious meal in itself. Since the 1980s, Maggi ads have featured a mother feeding her children the noodles, giving the not-so-subtle message that it is ‘fast to cook’ for moms and ‘good to eat’ for kids and could be substituted for breakfast, lunch or dinner. In one of the ads the Maggi mom assures families that one bowl of the noodles is equivalent to three rotis and vegetables.

That there cannot possibly be a better, tastier alternative to the otherwise boring roti-sabzi routine is clear from the messaging. Another target audience that Maggi has captivated are youngsters and students who leave home to study - Maggi is their ‘comfort food’. Cooking Maggi often is the litmus test that these students can live independently, convincing their protective parents that their child can manage his/ her food intake without much problem.<sup>iii</sup>

With the share of the noodle market at about \$1

billion in 2014, Maggi alone had sales of \$623 million.<sup>iv</sup> India is the second largest single market for Nestlé's Maggi brand. It has total dominance

over the industry built over two decades of careful brand building.

## Understanding Allegations and Nestlé's Rodomontade

Nestlé's woes began in a small town at a Government Regional Public Analyst Laboratory in Ghorakhpur through a sample collected from a smaller town, Barabanki. A 'routine check' on the packet of Maggi noodles was made in March 2014. The company has been engaging with the Laboratory from June 2014, when it appealed on 22 July 2014 for the sample to be retested at the Kolkata Laboratory. As it seems, the Company never took this seriously until May 2015, when the issue started garnering media attention. After 18 months of testing, retesting and validating, the Food Safety and Standards Authority of India, on June 5, 2015, indicated three major violations:

- (a) Presence of Lead detected in the product in excess of the maximum permissible level of 2.5 ppm;
- (b) Misleading labelling information on the package reading "No added MSG"; and
- (c) Release of non-standardised food products in the market without risk assessment.

With regards to **misleading labelling** of 'No added MSG' on its label, the company claimed MSG traces are detected due to the presence of other ingredients in the product. Thus, underlying the fact that the company did not independently add MSG during the course of production. In effect what was conveyed was that its naturally occurring MSG and not MSG that has been added to the product. This leads to the understanding that Nestle isn't doing due diligence to ensure that there is no MSG in the consumer's plate of Maggi. Nestle has possibly known about the MSG, but decided to slap on a "No added MSG" label despite following US FDA regulations which states "However, foods with any ingredient that naturally contains MSG cannot claim "No MSG" or "No added MSG" on their packaging. MSG also cannot

be listed as "spices and flavouring."<sup>v</sup>

### Everybody is doing it

"We have been declaring "No Added MSG" on Maggie Noodle Packs as we do not add MSG (flavour enhancer-E621) as an additive in the product. This is a common practice across the industry in many food products."

- Mr. Paul Bulcke, Global CEO, Nestle at FSSAI hearing on 4 June 2015

Nestle when questioned by the FSSAI stated that the reason they had put 'No MSG' on their label was because everyone in the industry was doing it. A global company that adheres to stringent regulations abroad had decided to ignore the prescribed clause for the Indian market. While Nestle claimed that they did not violate any law, what is questionable is how ethical and transparent is its business practice?

### Bordering on Preposterous

"The Product contained two parts - the Noodles and the Tastemaker. The samples had been tested for each of the two components separately whereas it should have been tested as a combined end product, i.e. the form in which it is finally consumed."

- Mr. Paul Bulcke, Global CEO, Nestle at FSSAI hearing on 4 June 2015

On the issue of the **presence of lead** in the tastemaker, Nestle claimed that the company's own tests showed lead levels well below what was permitted in a product of any kind. In addition, they alleged that the FSSAI testing process was potentially inappropriate as they individually tested the two separately packaged products as

opposed to doing it together. FSSAI's response to Nestle was that "The Company manufactures the Noodles and the Tastemaker and markets the same in two separate packages (Tastemaker or Masala is always in a separate sachet placed inside the main packet). The prescribed Standards have to be applied in respect of each of these two components independently and have no linkage with the processing of the end product as it is consumed". FSSAI went further to state that if it is to be added with water then one cannot make the

company liable for the source of the water.

In June 2015 Nestle went ahead with taking off 38,000 tonnes of Maggi<sup>vi</sup> from the shelves and this posturing in the public imagination was more as a goodwill gesture only to relaunch in November the same year after a five-month ban. In its new avatar, the 'No MSG' from the product label has been removed so that there is no confusion. In six months since its return it had re-conquered 57 per cent of the market share.

## Continued Deception

What continues to be problematic is the fact that Nestle has been in denial mode with respect to its social and legal responsibilities and has created a newer narrative of victimhood. By hiding behind technicalities and loopholes, it is still grossly guilty of misleading the society and the Government for years, of information, to which it is privy thereby putting the lives of millions of consumers at long-term risk (the extent of which has not yet been determined). The ambiguous labelling is in a way that it hides important information, which citizens deserve to know about the product allowing people to make an informed choice about consumption.

Principle 6 of Children's rights and Business Principles states that "Use marketing and advertising that respect and support children's rights". Under Pillar 2 of the Protect, Respect, Remedy framework of UNGPs on business principles, businesses must comply with the standards of business conduct in World Health Assembly instruments related to marketing health.<sup>vii</sup> In respecting and aligning with children's rights, the corporate's responsibility is to ensure that communications and marketing do not have an adverse impact on children's rights. This applies to all media outlets and communication tools. Product labelling and information should be clear, accurate and complete, and empower parents and children to make informed decisions. In the case of Maggi it is a clear case of violation of Principle 6 of Children's rights and Business Principles where the disclosure was inappropriate and incomplete.

Nestle India has misled consumers claiming that its Maggi noodle was healthy - "Taste bhi healthy bhi". By misleading their main constituencies targeted - mothers and children - Nestle has taken away their agency to make informed decisions, those that have an adverse impact on their health.

Another hugely questionable move seems to be the partnership that FSSAI and Nestle embarked on just a little over two year ago when the food regulatory authority had banned Maggi instant noodles over health and safety worried.<sup>viii</sup> Ironically, FSSAI inaugurated the Nestle Food Safety Institute (NFSI) at Manesar that will provide guidance and training on food safety. The institute conducts training programmes, on food safety management systems, testing methods and regulatory standards. NFSI is the third such state-of-the-art Research and Development (R&D) centre for training on food safety set up by the Swiss MNC globally. Since March 2014, the R&D centre has been Nestle's global hub for research on noodles and spices. The institute as part of its training offers courses for food safety professionals associated with FSSAI and state food and drug administrations. Nestle's role in influencing FSSAI in taking informed decisions while formulating regulations raises eyebrows about the potential conflict of interest since the case is pending in court.

## Has Supreme Court's order come a little too late?<sup>ix</sup>

The overall perception of what appears to be a setback to Nestle, where the apex court has vacated a stay on the Centre's action to seek monetary damages is that this may have come in a little too late. While the court has challenged Nestle with queries ranging from "why should we eat Maggi with lead in it or why should Maggi noodles have lead at all," to "why should children eat Maggi with lead" suggests that the court puts the spotlight on the health of the consumer as the primary consideration in this case, where the court like other aggrieved consumers is part of India's vast consumer base.

However, the partnership between the Centre and the corporate might appear as a collusion of sorts, casting a shadow on the courts' efforts. Perhaps for the first time, the court is also questioning the impact on health of children, thereby highlighting the need to address the rights of children. Added to this, diluting the case is the fact that the court has directed the Central Food Technological Research Institute (CFTRI) report be used for the basis of further proceedings, with no mention of misleading labelling information. A clean chit by CFTRI and not taking into cognisance the complaint filed by Consumer Affairs Ministry, many experts and critics would say is tilting the case verdict in favour of Nestle.

Within the purview of law, the revival of the case on both counts of excessive lead and no added MSG comes at a time when the corporate and the country's food regulatory institution is collaborating on food safety management systems and regulations. This raises questions of the intent of the Centre, regulatory institutions and the corporate in enabling and participating in a fair, transparent legal process that would align with Pillars 1 and 2 under the UN Guiding Principles on Business and Human Rights and adherence of Principle 1 of the National Guidelines on Responsible Business Conduct (NGRBC).

Nestle has very systemically challenged and appealed against the complaints and suits filed by the Centre. Early in September 2019, Nestle

stated that the company would be appealing against an order issued in 2015, imposing a Rs 20-lakh fine on the company for the presence of MSG in its instant noodle product Maggi arguing that the product is safe for consumption and MSG as an ingredient is not added at any stage of the manufacturing process. Given that this could be just one step away from what could be a verdict in favour of them, Nestle has managed to control the damage caused by the controversy in terms of business where it has slowly but surely crawled its way back to 60 per cent market share. With a verdict in its favour, Nestle would hope to regain its 75 per cent market share, on a firm footing of being cleared of all charges. Thus, the assumption can be that in a calculated, strategic move by Nestle to pave the way of regaining their reputation and number one position in the instant noodle category, the corporate is making efforts to minimise the recall by customers of the negative health impacts in consumption of Maggi.

A day after the Supreme Court revived the class-action suit by the government, Nestle was set to release advertisement campaigns highlighting the "trustworthy facts" about its instant noodles brand Maggi. "Our approach as a credible, trustworthy and responsible company is to always communicate with consumers on facts, in a simple, clear and transparent tone and manner," a spokesperson for Nestle India said in an email reply to one of the leading publications' query on the campaign. "What you will see in the print ads, to be released over the next few days, is just that." The campaign started on January 5, 2019.

Meanwhile, trainings being conducted by the food institute are helping to engage with the entire FMCG sector and industry in getting their buy in about food safety systems and regulations. Following Nestlé's example, ITC too has removed No Added MSG from the label. This does not auger well with the industry in its efforts to come across as an industry that is transparent and ethical in its practice.

While managing headlines, what has not been clarified to the consumer and begs further questioning from Nestle is whether the noodles and tastemaker separately packaged are safe for consumption or not given that the Tastemaker does not come with any printed instructions on the packet. And whether one should assume that the product does indeed contain MSG now, as the disclaimer has been taken off. The fact that none of this was clarified in the four year image rebuilding exercises points to the absence of an effective human rights due diligence system.

Nestle should answer “Tasty bhi, healthy bhi” or “Lead bhi, MSG bhi?”

- .....
- i. Praxis – Institute for Participatory Practices
  - ii. Partners in Change
  - iii. <https://www.firstpost.com/living/the-great-maggi-con-job-how-their-ads-have-been-fooling-you-for-years-2276688.html>
  - iv. India is the second largest single market for Nestlé’s Maggi brand, with retail sales worth \$623 million in 2014 across noodles, table sauces and other products, according to Euromonitor International.
  - v. <https://www.firstpost.com/business/adding-insult-to-injury-nestle-ceos-defence-of-maggi-is-weak-on-sincerity-and-facts-2281402.html>
  - vi. How Nestle is rebuilding in India – <https://www.livemint.com/Companies/xyFCHn7hGJm1zUkesEVy5L/How-Nestle-is-rebuilding-in-India18-months-after-the-Maggi.html>
  - vii. [https://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/CRBP/Childrens\\_Rights\\_and\\_Business\\_Principles.pdf](https://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf)
  - viii. <https://www.livemint.com/Companies/c1MIHhFpMJJIHupohxMVGn/Nestle-sets-up-first-food-safety-institute-in-India-at-Manes.html>
  - ix. Sources: <https://www.nestle.in/media/pressreleases/maggi-noodles-clear-maggi-noodles-were-and-are-safe>; <https://economictimes.indiatimes.com/industry/cons-products/food/nestle-to-launch-media-blitz-on-safety-of-maggi-noodles/articleshow/67387200.cms?from=mdr>; <https://www.livemint.com/Companies/l3u8WG4HQEvL82QuCWIFeK/Nestle-welcomes-SC-order-on-govts-Maggi-case-at-NCDRC.html>