

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Singhson / FOIA</i>	DATE <i>2-10-10</i>
------------------------------	------------------------

DIRECTOR'S USE ONLY		ACTION REQUESTED	
1. LOG NUMBER <i>1011333</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____	
2. DATE SIGNED BY DIRECTOR <i>CC: Stensland</i> <i>Cleared 2/12/10 letter attached</i>	<input checked="" type="checkbox"/> FOIA <input type="checkbox"/> Necessary Action DATE DUE <i>2-25-10</i>		

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

BASS

BERRY • SIMS^{INC}

RECEIVED

150 Third Avenue South, Suite 2800

Nashville, TN 37201
(615) 742-6200

FEB 08 2010

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Jody E. O'Brien

PHONE: (615) 742-7750

FAX: (615) 742-0439

E-MAIL: jobrien@bassberry.com

February 2, 2010

Via Certified Mail

South Carolina Department of Health and
Human Services
P.O. Box 8206
Columbia, SC 29202

Re: Freedom of Information Act Request
Alleged *Enterobacter sakazakki* exposure involving infant child, Christa Austin
Approximate date of incident: September 25, 2006
Location: Union, South Carolina and/or Spartanburg, South Carolina
FDA Consumer Complaint No. 38692

Dear Sir or Madam:

This firm represents Nestle USA, Inc., in a lawsuit pending in South Carolina. The mother, Brandy Austin, of an infant, Christa Austin, has filed a lawsuit against Nestle USA, Inc., in which she alleges that Christa Austin was exposed to the bacteria *Enterobacter sakazakki* ("E-sak") through ingestion of powdered infant formula manufactured by Nestle. Nestle denies all such allegations.

An investigation was conducted by the Food and Drug Administration (FDA) in or about September - October 2006. Upon information and belief, representatives of the South Carolina Department of Health and Human Services ("SC DHHS") may also have been involved in this inquiry, or may independently have records concerning Brandy Austin or Christa Austin. During the investigation, a number of samples are believed to have been taken by the FDA investigator and/or the SC DHHS or CDC representatives, which may have included infant formula samples and environmental samples from the infant's home. Nestle has been advised that the formula samples tested by the FDA were negative for the E-sak bacteria.

All agency records concerning this event, including, but not limited to, any formula and environmental samples taken, and the test results of those samples, are highly relevant evidence to the lawsuit described above.

All agency records concerning Brandy or Christa Austin and/or this event, including, but not limited to, any formula and environmental samples taken, and the test results of those samples, are highly relevant evidence to the lawsuit described above.

Pursuant to the Freedom of Information Act, South Carolina Code of Laws § 30-4-10, and any implementing regulations, I hereby request that the complete SC DHHS file(s) relating to this event and/or investigation be produced to us at this time, including, but not limited to:

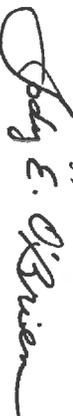
- 1) Any and all test results for samples of infant formula, water sources, and other environmental specimens collected in connection with infant Christa Austin's reported alleged exposure to E-sak;
- 2) Any and all protocols utilized by the SC DHHS in collecting and testing the previously referenced samples;
- 3) Reports, memoranda, notes and all such documents generated by any SC DHHS investigator or representative;
- 4) Any and all attachments and/or exhibits referenced in the SC DHHS investigator's or representative's reports, memoranda, and notes;
- 5) Items collected during the investigation, whether or not listed as attachments to the aforementioned documents, including, but not limited to: photographs, interviews, statements, informational listings, etc.;
- 6) All correspondence related to the events described herein, including, but not limited to, all correspondence between the SC DHHS and any other government agencies, correspondence between the SC DHHS and any of the infant's medical providers, and correspondence between the SC DHHS and the infant's parents or caregivers; and
- 7) All documents related to Brandy Austin or Christa Austin's application, enrollment, participation in, and/or receipt of assistance or benefits from the Women, Infants and Children ("WIC") Program.

We will pay all reasonable processing and photocopying fees associated with this request. If you regard any of the requested documents as potentially exempt from disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. Please release all reasonably acceptable non-exempt portions of documents. To permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the specific basis for your exemption claims. Please also notify me of appeal procedures available under law.

I enclose herewith an authorization executed by Brandy Austin, the mother of the minor child, authorizing us to obtain full, complete, unredacted copies of all records in your agency's possession, custody, or control related to the above-referenced incident.

Thank you very much for your consideration and attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Jody E. O'Brien

Enclosure

cc: Samuel L. Felker (w/encl.)

AUTHORIZATION FOR RELEASE OF RECORDS

TO: South Carolina Department of Health and
Human Services
P.O. Box 8206
Columbia, SC 29202

NAME: Brandy Austin and Christa B. Austin
Brandy Austin SS#: 249-57-0712
Brandy Austin DOB: February 22, 1984
Christa Austin SS#: 656-24-0673
Christa Austin DOB: September 19, 2006

I hereby authorize the South Carolina Department of Health and Human Services to release to Samuel L. Felker, and/or any representative of Bass, Berry & Sims, PLC, 150 3rd Avenue South, Suite 2800, Nashville, TN 37201, (615) 742-6200, any and all health, medical, environmental, investigatory, employment, or other confidential information regarding the above named individual(s) which South Carolina Department of Health and Human Services has in its possession. This authorization is for records only and does not authorize any conversations.

Brandy Austin
Brandy Austin, Individually and as
Mother of Minor Child, Christa B. Austin

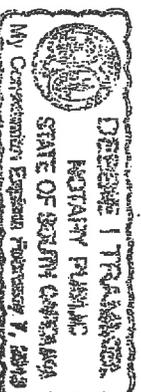
12-1-09
Date

STATE OF SC
COUNTY OF Sumner

Sworn to and subscribed before me this 1st day of Dec., 2009.

Bellevue S. Manning
Notary Public

My Commission Expires: 2-7-13





2920248206 BOA4

South Carolina Department of Health and
Human Services
P.O. Box 8206
Columbia, SC 29202

FEB 09 2010

ZIP 37201
041L11212951



7006 0810 0001 9193 8503



\$05.71¹⁰

US POSTAGE

02/02/2010

neopost

FIRST-CLASS MAIL

CERTIFIED MAIL™

150 Third Avenue South, Suite
Nashville, TN 37201

General Counsel

RECEIVED

FEB 08 2010

Department of Health & Human Services
OFFICE OF THE DIRECTOR

BASS
BERRY-SIMS PC



Page # 000333 ✓

February 12, 2010

Jody E. O'Brien, Esquire
Bass, Berry & Simms, PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201

Re: Freedom of Information Act Request – Christa Austin

Dear Ms. O'Brien:

Your enclosed letter of February 2, 2010, was referred to this Office for a response. This agency, the Department of Health and Human Services, administers the South Carolina Medicaid Program. As we understand your request, we have no documents responsive. You have probably directed a similar request to the South Carolina Department of Health and Environmental Control (DHEC). No doubt they will provide the requested documents, if any are available.

Please contact me if there are any questions. My direct is (803) 898-2791.

Sincerely,



Richard G. Hepfer
Deputy General Counsel

RGH/h

Enclosure