

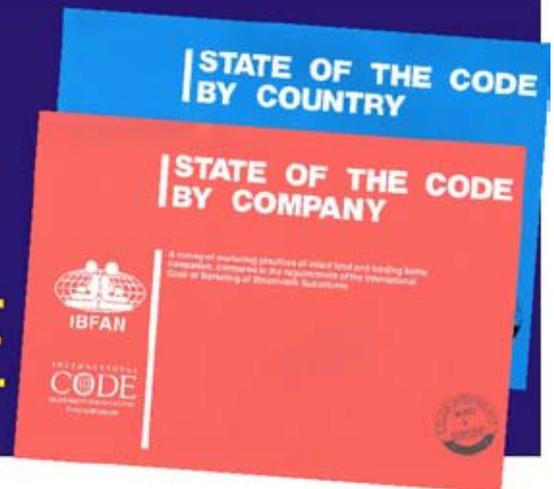


IBFAN
INTERNATIONAL
CODE
DOCUMENTATION CENTRE

IBFAN/ICDC
P.O. Box 19
10700 Penang, Malaysia
Fax: +604-890 7291
Email: ibfanpg@tm.net.my
Web: www.ibfan.org

ICDC LEGAL UPDATE

July 2007



From ICDC's desk in Penang...

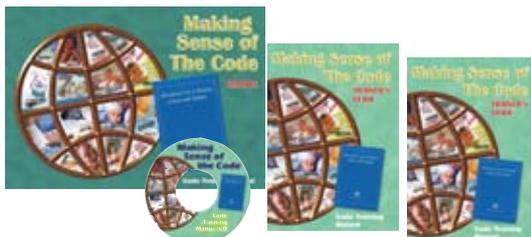
Since the last Legal Update in Dec, ICDC wrapped up the 2006 programme by conducting a 3-day Code Monitoring course with the theme “*Babies before Business: 25 years of the International Code*” for IBFAN Arab World (IAW) participants.



Keynote address by Annelies at the 2nd Regional Meeting of IAW, Cairo

Then there was the usual WHO Executive Board meeting and 2007 World Health Assembly in Geneva. Annelies made a side trip to Jeddah, Saudi Arabia to speak out against sponsorship at a sponsored neonatology conference. She survived to tell the tale – See below. She also briefly visited Code supporters in Dubai.

A long standing project finally rolled out–*Making Sense of the Code*, which is based on a 3-day Code awareness exercise. This do-it-yourself kit comprises a *Trainer's Guide*, *Handouts* and *Teaching Charts and/or* a CD with the charts in PowerPoint. It is now on sale from ICDC.



Once every three years, ICDC gets saddled with the compilation of the *Breaking the Rules, Stretching the Rules* report (BTR). The better part of 2007 will be spent fine combing the database and evidence

submitted by Code supporters from around the world and preparing our analysis, company by company. It promises to be another bumper BTR, in a different and more exciting format and it should come out before the next Legal Update.

As we prepare this issue, Joo Kean is at the Regional Consultation on breastfeeding protection, promotion and support in the Philippines... Emphasis is on the Code.

Yeong Joo Kean & Annelies Allain

HIGHLIGHTS

- Human Rights dimension in the Philippines– the RIRR saga
- Brazil Law under Siege
- Forbidding Claims in the UK
- New York City bans free formula samples
- Revitalising the Decree in Bahrain
- Bearding the lion in his den in Jeddah
- Botswana

Human rights dimension in the Philippines. The RIRR saga.

The legal battle between industry and the Filipino government is still raging. In Dec. 2006, Legal Update reported on the Revised Implementing Rules and Regulations (RIRR) under the 1986 Milk Code to further restrict marketing practices. Companies took the government to Court.

Amidst the contentious court proceedings, Jean Ziegler, the UN Special Rapporteur on the Right to Food stepped in to lend support to the Department of Health (DoH). He stressed the importance of breastfeeding for the survival, growth and development of children. Legal arguments subsequently spilled out of the court-room and turned into a media contest between the two factions. ▶

One ad placed by industry in the country's top Newspapers says that while breastfeeding is the best practice, mothers have the right to choose. It cites WHO and UNICEF in support. While the ad appears to be promoting breastfeeding, the underlying message is that many mothers cannot and so it's OK to use formula.

Ziegler denounced the ads and the lobby by the Pharmaceutical and Healthcare Association of the Philippines, which represented industry interests. He deemed the PHAP media campaign misleading, deceptive, and malicious in intent, and accused PHAP of manipulating data from WHO, UNICEF and DoH for the sole purpose of protecting the huge profits of baby food companies, against the best interests of Filipino mothers and children.

Ziegler also wrote to the Chief Justice of the Supreme Court on how the RIRR was developed in line with the Code, subsequent WHA resolutions and international human rights instruments such as the International Covenant on Economic, Social & Cultural Rights (CESCR) and the Convention of the Rights of the Child (CRC).

As Special Rapporteur, Ziegler has a mandate to respond to all aspects of the right to food and to work with governments, intergovernmental organisations and NGOs on the promotion and effective implementation of that right. He sees the issuing of the RIRR as a measure to uphold the government's obligation to respect and protect the child's right to food and the right to the highest attainable standard of health. To fulfil these rights under the CRC, governments are obliged to ensure that all people know about the advantages of breastfeeding.

The CESCR Committee has highlighted the need for legislation to enable breastfeeding and to regulate the marketing of breastmilk substitutes.

Code implementation thus contributes towards the realisation of parents' right to accurate and unbiased information about breastfeeding; it protects against product propaganda which undermines and discourages breastfeeding and effectively removes commercial influence over infant feeding decisions.

Ziegler's approach echoes that of Stephen Lewis, former Executive Director of UNICEF, who said:

"Those who make claims about infant formula that intentionally undermine women's confidence in breastfeeding are not to be regarded as clever entrepreneurs just doing their job, but as human rights violators of the worst sort".

In a timely move, George Monbiot, writing in the UK Guardian, summarised the urgent struggle in the Philippines in the light of the G8 Summit. He exposed the greed of the milk companies backed by the US Chamber of Commerce and Department of Trade versus the pious words of the 8 richest nations who were about to begin their debate on how to help the poor. A powerful message challenging the US to stop being double-faced.

On 19th June, in Manila, the Supreme Court listened to the oral arguments of both factions in open court, and a final verdict on the RIRR is due in two months.



Filipina women bare their breasts outside the Supreme Court in Manila in support of the RIRR. (picture: The Philippine Star)



Brazil Law under Siege

While industry and government in the Philippines clash over validity of the Milk Code, another battle was initiated in the Brazilian Congress to weaken the law there.

Law No. 11.265/2006 regroups three existing ministerial decrees with regard to marketing of foods for infants and young children into one piece of legislation. It is a progressive law which includes detailed provisions for labelling of the various products within its scope. Specific notices must encourage exclusive and continued breastfeeding and warn about health risks of such products. Illustrations of any type on infant formula and follow-up formula labels are prohibited.

As a result, breastfeeding rates and duration improved and Brazil has been cited as a shining example of government commitment to protecting infant health.

But one should never rest on one's laurels. In 2007 industry launched a round of lobbying and convinced a few MPs to propose 19 amendments in Congress. The main changes proposed were to weaken the label warnings on risks of artificial feeding.

IBFAN Brazil, UNICEF, PAHO and ICDC joined many other breastfeeding supporters in Brazil and the world to protest to the Brazilian government. Appeals were sent to senators to resist any attempt to weaken Brazil's labelling and other provisions.

A short-lived victory came in April, when the Senate rejected a proposed amendment and the bill was returned to Congress for new deliberations. In May, the National Council for Food Security in Brazil, a high-level advisory body advised the President to veto the bill. Unfortunately, President Lula decided to side with the agro-dairy industry, and the amendments are now adopted, setting Brazil back many years.

Coincidentally (or, maybe not), news was received in April that the Hospital of the Federal University of Pernambuco,

in a poor area of Brazil, opened a new “breastmilk centre”. This centre received US\$19 million from Nestle Nutrition for construction works. Nestle will also provide nutritional supplements and special milks!



Forbidding Claims in the UK

In March 2007 the UK Government’s Food Standards Agency (FSA) ordered a crackdown on health and nutrition claims on infant formula labels. Claims like “now even closer to breastmilk”, “helps to support immunity”, “prebiotics support natural defences”, illegal since 1995, will now have to be removed from the packs and marketing materials of brands such as SMA (Wyeth), Farley’s (Heinz), Cow & Gate and Aptamil (both of Numico). New packs for SMA, Farley’s and Cow & Gate are already appearing on shelves, with most of the prohibited claims removed.

This crackdown is timely in view of a 2004 Department of Health survey which showed that 34 percent of mothers incorrectly believe that modern infant formula are very similar or the same as breastmilk. It validates the International Code prohibition on all forms of promotion. It is also in accordance with WHA resolution 58.32 [2005] which urges Member States “to ensure that nutrition and health claims are not permitted for breastmilk substitutes, except where specifically provided for in national legislation”.

The FSA wrote to companies in 2005 to remind them of the provisions of the 1995 Infant Formula and Follow-on Formula Regulations¹. Trading Standards Officers, responsible for enforcing the regulations, have received updated guidance.

Les Bailey, Policy Expert at LACORS (Local Authorities Coordinators of Regulatory Services), told the Daily Mail that although baby milk formula companies insist that their nutrition claims are valid, “the legislation is framed in such a way that it doesn’t matter whether they are correct or not. It is designed to promote breastfeeding”. The aim is to ensure that new mothers are not unduly influenced when deciding their feeding practices.

It is a major victory for Baby Milk Action, our IBFAN partner in the UK. It has campaigned for a decade for baby food companies to stop making health and nutrition claims and for the authorities to take action.

¹ These Regulations implement the EU Directive 91/321/EEC (recast 22 December 2006 vide Commission Directive 2006/21/EC) which give effect to the International Code in the United Kingdom. The Regulations fall below the minimum standard set by the International Code as they cover only infant formula intended for use during the first four to six months of a baby’s life. This age range is not in accordance with the WHA resolution 54.2 which recommends exclusive breastfeeding for first six months of life and continued and sustained breastfeeding for 2 years.



New York City bans free formula samples in public hospitals

In January 2007, a multimillion-dollar good-parenting campaign was launched in New York City, spearheaded by Mayor Bloomberg. The campaign includes, among

other things, a promotion for more breastfeeding at city-run hospitals and a budget of more than US\$2m is being allocated for this purpose. 50 health workers will be also trained specifically to help women breastfeed.

In line with the Code and subsequent WHA resolutions, part of the strategy is to get free formula samples out of the nursery. Following the global recommendation on the optimal duration of breastfeeding, the Mayor’s Health Commissioner advocates that babies be fed exclusively on mother’s milk for their first six months. Current surveys show that while 75 percent of ‘Big Apple’ moms start out breastfeeding, 38 percent quit before six months.

In a country where 4 million babies are born each year, the US\$3.5 billion-a-year formula industry have long plied hospitals with goody bags filled with free formula samples and bottles for new mothers. Brands include Enfamil from Bristol-Myers-Squibb; Similac from Abbott Ross and Good Start from Nestlé. This long standing practice amounts to a de facto endorsement of infant formula by health professionals and has been banned in countries which implement the Code. Deborah Kaplan, Chief of the Health Department’s Bureau of Maternal, Infant and Reproductive Health of the City said that this practice will end. In January, 11 public hospitals began implementing a plan to stop discharge bags with formula company logos, advertisements and free formula samples. Ultimately, the hospitals will start paying for all infant formula, contended Ms. Kaplan. Also, any contact between formula company representatives and patients will be prohibited. Most studies have shown that free formula samples lead to significantly lower breastfeeding rates.

Hospitals that have joined the anti-gift bag movement remain relatively small. Most US hospitals and birthing centres still give away free formula samples. Efforts to ban gift bags at the State level have repeatedly failed because of the milk industry’s ferocious lobbying which, in 2006, defeated an attempt in Massachusetts. (See Legal Update, April 2006). For example, Bristol-Myers-Squibb ‘donates’ \$13 million of free formula and newborn products to Californian hospitals annually.

The US was the only country to vote against the International Code in 1981. Since 1994, the US has joined consensus adoptions of World Health Assembly resolutions which refer to the International Code and reiterate its principles. Legal Update hopes that developments in trendsetting New York will spread elsewhere in the US and that the abuse of the healthcare system by profit-hungry companies will finally stop.



Revitalising the Decree in Bahrain

Following the 2nd Regional Meeting of IBFAN Arab World (Cairo, December 2006), the Breastfeeding Committee of Bahrain reports that steps were taken to give effect to the 1995 Bahrain Decree No 4. This Decree implements

the International Code in Bahrain. This proactive step by the Committee not only caused a stir among baby food companies, it also reignited the interest of the Ministry of Health in the 12 year old Decree.

In conjunction with World Breastfeeding Week in Bahrain in Dec 2006, the Committee carried out surprise visits to all health centres to check on compliance by baby food companies.

Promotional materials, gifts to health workers and invitations to attend conferences, were found. The worst violations involved leaflets and small gifts as these get passed on to mothers and carry implicit medical endorsement. Monitoring also revealed that new health workers are unaware of the Decree. Government health employees, in general, do not recommend any brand of formula milk when asked by parents.

Violations were picked up, recorded and reports were filed with the Bahrain Ministry of Health which told offending health centres to behave. Letters of appreciation were sent to health centres which uphold the Bahrain Decree. Companies found to be violating the Decree were issued with letters denouncing their malpractices.

Some companies tried unsuccessfully through different channels to get the Committee to withdraw their letters. In yet another proactive approach, the Committee held meetings with company representatives and obtained their agreement to comply with the Bahrain Decree but only time will tell if they are sincere in their promises. For the time being, company representatives are getting the cold shoulder in health centres. To quote one rebuffed marketing rep *"What happened? We used to visit health centres and find friendly faces, now everyone says, you should not be here!"*

The efforts of the Committee were boosted by an immediate response from the Ministry of Health. Plans to control company promotion went into full swing and reminders were sent to all health centres reiterating the Ministry's commitment to breastfeeding. Health centres have started activities such as lectures, meetings and distributing information to revitalise breastfeeding support.

The positive experience in Bahrain should be an inspiration to breastfeeding advocates in the Arab World and elsewhere. Legal Update congratulates the Committee in Bahrain and hopes it will continue monitoring.



Bearding the lions in their den

In Feb 2007, Annelies was invited to a scientific conference in Jeddah, Saudi Arabia, with the theme *Hot Topics in Neonatal Medicine*. She was invited to speak on the pitfalls of sponsorship and the risks of bottle feeding. This was seen by ICDC as a wonderful opportunity to give the Code a boost in Saudi Arabia.

When it was learnt that the conference was co-sponsored by 3 companies at the top of IBFAN's list of baddies namely Abbott, Nestle and Wyeth, our initial reaction was to decline the invitation, a view supported by several other senior IBFANers, for fear of embarrassing the organisers, or of being co-opted in the process. When it was explained that an outsider's view was crucial to enlighten participants about the dangers of sponsorship, Annelies decided to brave the trip, or to beard the lions in their den, so to speak.

Expenses for the trip were covered by ICDC and the local IBFAN group in Jeddah so that no benefit would be received from company sponsorship. At the 3-day conference, Annelies gave presentations on sponsorship, on challenges to the Code in 2007, and on the risks of formula feeding. Fellow IBFANers from IBFAN Arab World gave updates on breastfeeding, monitoring and the hazards of intrinsic contamination of powdered formula as well as a regional overview of Code implementation.

Plaudits from the organisers and the audience didn't go down well with the evidently hostile milk companies. Nestlé refused to give Annelies a NAN 1 folder "because you will misuse it." Wyeth actually physically blocked her camera when she wanted another shot of their conference booth.



Huge advertising boards at neonatal conference



Another one up for Botswana

The Botswana Ministry of Health received an application for permission to sponsor a workshop on Nutrition and HIV/AIDS through the Nestlé Nutrition Institute Africa (NNIA). After scrutiny of the programme and budget, and after conferring with ICDC, the Ministry quoted Nestle chapter and verse from the Botswana regulations and the WHA resolution 58.32 (2005) to warn against conflicts of interest.

Although permission was given for the workshop to be held, the Ministry determined that health workers' attendance at the workshop should not be sponsored by Nestle, either financially or in kind and no practices which might create an association between the company and breastfeeding would be allowed. Despite the green light, the event was cancelled. ICDC congratulates the Government of Botswana for enforcing its Code-based regulations.