



ICDC LEGAL UPDATE

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From ICDC's desk in Penang...

The Innocenti +15 celebrations held in Florence, Italy in Nov. 2005 were the highlight of the past 6 months. Many will recall the landmark 1990 Innocenti Declaration which set ambitious new standards for national support to breastfeeding. Fifteen years on, a wide partnership of UN agencies and breastfeeding groups organised Innocenti + 15 to assess progress, examine challenges and move the international breastfeeding agenda forward. ICDC and IBFAN Geneva were fully involved in the run-up to the 2-day event to ensure that the International Code featured prominently. This issue contains a summary of the Innocenti +15 celebrations.



Picasso's *Maternity* graces this Innocenti +15 brochure

ICDC's legal advisory services were particularly stretched in the last quarter of 2005 as more and more countries submitted laws to our Code documentation centre. We received drafts and laws from 21 countries, a record for ICDC! Although the laws are not all new, they all require assessment, review and input.

On the publication side, we now have a compilation of the International Code and all relevant WHA resolutions with

brief annotations, altogether in a smart small booklet. Code aficionados will find it very handy. The booklet was launched at the Innocenti +15 celebrations with the distribution of 400 copies. We knew we had hit the jack-pot when the Pan American Health Organization asked for permission to print 15,000 copies in Spanish for Latin America.



We also produced two monitoring reports – an *ICDC Focus on Nestlé* and a *Look What They're Doing in the United Arab Emirates*. Write to ICDC for your copy of any of these publications.



We attended the WHO Executive Board meeting in January and participated in the launch of the national law and training of health workers in Botswana in February/March.

In co-operation with UNICEF and IBFAN Afrique, ICDC conducted a regional training course on Code implementation for Francophone countries in March in Burkina Faso.

We promised ourselves time to pause and reflect as our current funding cycle draws to a close but first we bring you this Update.

Yeong Joo Kean & Annelies Allain

HIGHLIGHTS

- ❖ Innocenti +15 – Achievements, challenges and future imperatives
- ❖ Nestlé CEO tangles with Minister in Italy
- ❖ Campaign against sponsorship in the UAE
- ❖ Monitoring gets results in Bulgaria
- ❖ Product liability settled claims in Israel
- ❖ Fabricated formula research exposed in Canada
- ❖ Abbott ad criticised in the US
- ❖ Gift bag ban in Massachusetts stalled
- ❖ Newsflash – laws adopted in Honduras, Mozambique & Cambodia

Innocenti +15 – Achievements, challenges and future imperatives

Innocenti +15 was not in our workplan but when requested to contribute, ICDC found it hard to say no to the opportunity to emphasise the need to protect breastfeeding.

Under UNICEF's patient coordination, some 20 co-organisers planned the event. We started by writing a book together to highlight proven interventions, tools and lessons learned: *1990–2005 Celebrating the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding - Past Achievements, Present Challenges and the Way Forward for Infant and Young Child Feeding*. It was condensed to about 40 pages which served as a preliminary report in Florence.

In taking stock for 15th anniversary of the Innocenti Declaration, some amazing figures were revealed:

- six million lives are saved annually from pneumonia and diarrhoea alone due to current levels of breastfeeding;
- optimal infant and young child feeding could save 2 million lives more;
- global breastfeeding rates have risen by at least 15 per cent since 1990;
- exclusive breastfeeding levels for children under six months have increased by as much as three or fourfold in some countries;
- nearly 20,000 hospitals in 150 countries have become 'baby-friendly';
- more than 60 countries have laws or regulations implementing the International Code.

In a press statement issued for the event, UNICEF Executive Director, Ann M. Veneman hailed the progress that had been made, saying "the Innocenti Declaration created a movement that has helped to save millions of lives and brought us closer to the Millennium Development Goals".

Other messages were not as cheerful. Innocenti partners warned that the original goals of the Declaration are still far from met. For instance, only 39 per cent of infants in developing countries are exclusively breastfed. Also, mothers and children are facing new dangers, including a growing number of emergencies and the rise of HIV/AIDS.

IBFAN co-engineered an internationally endorsed statement and the event culminated in a call for greater government action and investment to protect exclusive breastfeeding. The Innocenti Declaration of 2005 has since been approved by all Innocenti partners and endorsed by the UN Standing Committee for Nutrition. The long Declaration calls on all:

- governments to implement all provisions of the International Code and subsequent resolutions in their entirety as a minimum requirement, and to establish sustainable enforcement mechanisms to prevent and address non-compliance.
- manufacturers and distributors to ensure full compliance with all provisions of the International Code and subsequent relevant resolutions in all countries, independently of any other measures taken to implement the Code and to ensure that all processed foods for infants and young children meet applicable Codex Alimentarius standards.
- non-governmental organisations to draw attention to activities which are incompatible with the Code's principles and aim so that violations can be effectively addressed.

Download the 2005 Declaration at www.waba.org.my/innocenti15.htm

Product recall – Nestlé CEO tangles with Minister in Italy

As the Innocenti meeting was in full swing, news trickled in about reports in the Italian media that 30 million litres of Nestlé milk products including the *Nidina* infant formula and follow-up formula had been seized in the country. The seizure was made under court order by Italian food safety regulators following the detection in products of IsopropilThioXanthone (ITX), a fixative of printing ink used on liquid milk cartons. Nestlé promptly issued a full-page announcement in main Italian newspapers stating that the company had taken a decision to *recall the products autonomously as a measure of extreme precaution towards consumers*. The CEO of Nestlé, Peter Brabeck declared that there was an agreement between Nestlé, the Italian Health Minister and EU authorities to allow the continued sale of the remaining stocks of contaminated milk and to give time to Nestlé to change the process of packaging to avoid future contamination.

As anger among consumer groups swelled over the danger that Italian consumers were exposed to, the Italian Health Minister issued a rebuttal claiming that Brabeck's statements were false, and threatened to take Brabeck to court if he did not withdraw his statements. The EU Health and Consumer Protection Directorate-General also denied Brabeck's statements. Brabeck subsequently apologised for his "memory lapse" but the Italian Health Minister was last reported to want to press ahead with a lawsuit saying: "The CEO of a multinational must not be allowed to sully Italian institutions with impunity."

This may well turn out to be a storm in a tea cup for CEO Brabeck, but in the words of a Swiss report, there are two lessons to be learnt – one: you do not mess around with food; two: don't mess with Ministers either.

Campaign against sponsorship – Progress in the UAE

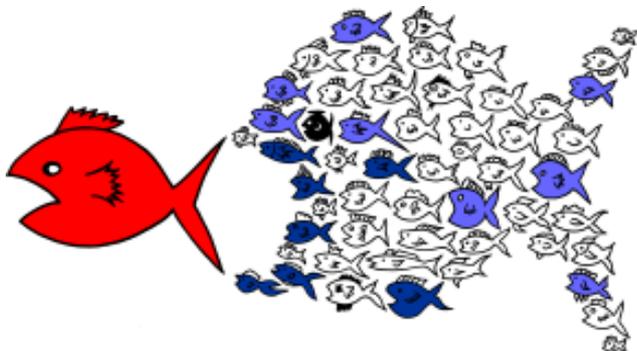
In yet another PR setback for Nestlé, breastfeeding advocates in the United Arab Emirates scuppered the company's plan to sponsor a Postgraduate Certificate Course in Paediatrics. The course, announced in January and scheduled for March, was part of a continuing medical education programme jointly organised by the University of Sharjah, the Australian Monash University and the local health authority. Nestlé was allocated 5 sessions in the course programme in return for its sponsorship.

Health professionals opposed to sponsorship were in a quandary because previous courses under the same collaboration were excellent and highly regarded. When one doctor saw the ubiquitous Nestlé logo on the application form, she wrote to ICDC for advice, stating "I cannot believe that beside the 3600 UAE Dhs that we have to pay, Nestlé's logo will be on the final certificate." In a letter to both Monash and Sharjah Universities, the doctor made her stand clear by offering to cover the extra fees which Nestlé is purportedly subsidising in return for a disclaimer of any links to the sponsorship and a certificate without the Nestlé name and logo.

In a wave of solidarity and anger, other health professionals affiliated to IBFAN Friend's Scientific Society began, personally and collectively, a set of interventions which turned the tide against the Nestlé sponsorship.

Since sponsorship is not specifically prohibited by the International Code, the campaigners used 'conflict of

interests' principles enunciated in World Health Assembly Resolutions and Nestlé's poor record in Code compliance. Monash responded expressing concern but said that its ethical guidelines were not contravened. Their letter explained that Nestlé sponsorship is to support tutorials and defray tuition fees and that Nestlé, despite the 5 sessions allocated to it, will in no way contribute or determine the course content.



The collaborative effort by breastfeeding advocates in the UAE shows what the power of one and the power of many can do when people work with a common vision.

The university in Sharjah heeded the call to mind its professional and academic standing. They decided at the 11th hour to meet with the campaigners' representative, an avid Code monitor who knows her facts. Following that meeting, it was decided to stop Nestlé's participation at the course. The time given to Nestlé was re-allocated to topics by certified lactation consultants. A concession was made allowing Nestlé to continue to sponsor the fees for participants willing to accept the sponsorship. Needless to say Nestlé was not pleased. *Legal Update* congratulates everyone involved.

Monitoring works! Code activities get results in Bulgaria

In conjunction with their 10th anniversary, the IBFAN group in Bulgaria held a widely publicised round table discussion with representatives of government, industry, consumer groups, health workers, lawyers, journalists and mothers.

The group has been monitoring the activities of companies and were able to procure a few important changes at the round table. Armed with the International Code and subsequent World Health Assembly resolutions and advice from ICDC, IBFAN Bulgaria succeeded in getting Hidrocomm Ltd, a mineral water company to remove the image of a breastfeeding mother and baby and the statement *Appropriate for preparation of baby foods* from the label of its Thorn Spring mineral water. In their place is the notice *WHO recommends breastfeeding for babies* which is still not the liking of the IBFAN group but an achievement nonetheless.

The group was also able to convince "9 Months" parenting magazine to remove the usual Nestlé advertisement from the page devoted to letters from mothers and replace it with articles on breastfeeding.

The activities of the group received valuable air time on TV. The show focussed on Code violations and the practice of endorsing baby food products by the Bulgarian Paediatric Association (BPA). The show revealed the BPA was an illegal organisation and has received money illicitly from companies. *Legal Update* extends its felicitations to our friends in Bulgaria.

Product liability – Remedia settles claims in Israel

The August 2004 issue of *Legal Update* reported that the German company Humana paid an undisclosed amount (estimated to be between US\$ 16 to 22 million) to families in Israel whose babies were affected by thiamine deficiency after using soy-based infant formula manufactured by the company.

The Haaretz news service reported in September 2005 that the Tel Aviv District Court had approved a settlement between Humana's local partner Remedia and three families whose babies suffered permanent damage after feeding on Remedia's product. The settlement was arrived at the conclusion of an arbitration procedure. Each family is to receive compensation totalling NIS 10.5 million (US\$2.2 million). They are required to sign a waiver absolving Remedia from responsibility for the damage suffered by their children.

Fabricated research on hypoallergenic formula – eminent scientist exposed in Canada!

Ever wondered how companies obtain the research cited in the "scientific and factual" materials distributed to health professionals and allowed under Article 7.2 of the International Code? For one product at least, we now know there has been fabrication and the ease with which research can be fraudulently produced makes for scary reading.

Following allegations of fraud by the British Medical Journal (BMJ) against one Dr R.K. Chandra, an expert in nutrition and immunology, the Canadian Broadcasting Corporation investigated Chandra and discovered an amazing pattern of scientific fraud and financial deception. This includes a huge study undertaken by Chandra in the late eighties to test whether specific brands of formula could help babies avoid allergies.

When he was initially retained by Abbott Ross, Chandra engaged a research nurse, Marilyn Harvey, to find 288 newborns of allergy prone parents. This was a difficult task in a small city like St John's, Newfoundland, where they worked. Ms Harvey was therefore surprised to find a year later, when she had collected only a handful of cases, that Chandra had already published the results of an identical study on a similar product by Nestlé and shortly afterwards another study on a product by Mead Johnson. These two studies supported the idea that the products were hypoallergenic, but the original, and almost identical, Ross product was not. Given the impossibility of Chandra having recruited over 700 babies, Ms Harvey blew the whistle and his employer, Memorial University began an investigation.

Although the initial investigation uncovered fraud, the university backed down under threat of a lawsuit from Chandra. It was compelled to launch a new investigation when the prestigious BMJ complained about another paper which Chandra submitted for publication. The second investigation could not proceed because Chandra quietly slipped into retirement in Switzerland. A sad end to brilliant career? Chandra is now safely ensconced in Switzerland living off his fortune in 120 different bank accounts in various tax havens. Is he concerned about the health professionals, parents and babies who were victims of his deceit?

This exposé underlines the importance of WHA resolution 58.32 (2005) which cautions against conflict of interests and calls for research to contain a "declaration relating to conflicts of interest and is subject to independent peer review."

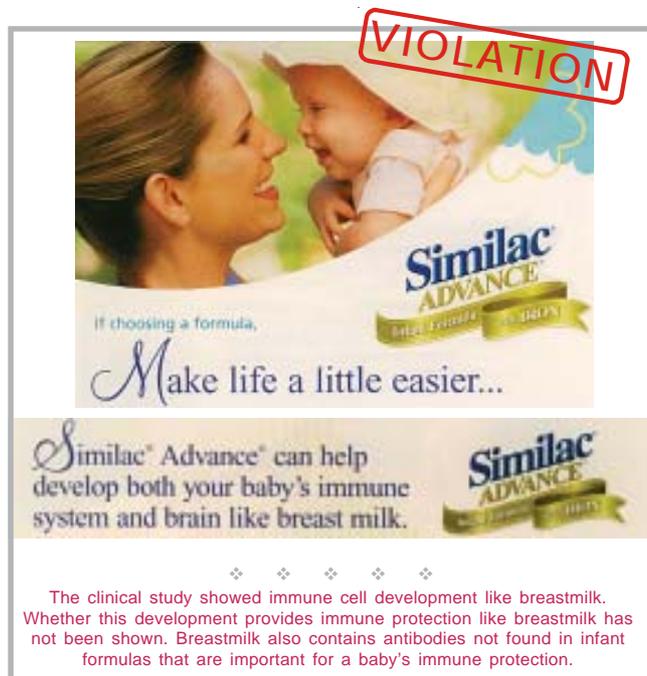
Abbott – a bashing for bad ads

The US company Abbott whose marketing practices ICDC has repeatedly found to be in violation of the International Code worldwide was recently condemned by the US National Advertising Review Board (NARB) for its advertising tactics.

On a complaint lodged by Mead Johnson which markets rival product *Enfamil*, NARB ruled that Ross ads were confusing because they used a disclaimer that directly contradicts the implied message that Similac has been clinically shown to help support infant immune systems.

NARB ruled that the challenged advertising, which states that nucleotide-supplemented formula 'can help develop' and 'help support the development' of a baby's immune system, is likely to be perceived by many reasonable consumers as indicating that nucleotide-supplemented formula will provide better immune protection to infants.

NARB said that the disclaimer directly contradicts the implied message that nucleotide-supplemented formulas provide better immunity protection.



NARB ruled the idealising text and disclaimer such as the one reconstructed here contradict each other and are "confusing at best"

The New York based Brandweek Magazine (Nov. 15, 2005) reported that Abbott was extremely disappointed with the ruling but would discontinue its ads.

Code implementation would have prevented such misleading claims. To date, the US Federal Government has taken no action to implement the Code.

Executive intervention in Massachusetts – Hospital gift bag ban put on hold

Elsewhere in the US where political support for the International Code is virtually non existent, another saga is brewing. In December 2005, the groundbreaking news was released that Massachusetts has amended its Hospital Licensure Regulations to become the first state in the US to prohibit hospitals from giving out free formula company diaper bags to new parents. As breastfeeding advocates in

the state rejoiced, news unfurled in February 2006 that Governor Mitt Romney had asked the Public Health Council to repeal the prohibition.

In a statement that threatens to entrench corporate America's influence over a vulnerable population in hospitals, the Republican Governor described the prohibition as an example of government intrusion into private lives. "I guess I'm not enthusiastic about the heavy arm of government coming in and saying: We think we know better than the mothers and we are going to decide for you", Romney said. "Let's let the moms decide."

At the Governor's behest, the Board voted unanimously to suspend its December approval of the ban while directing public health authorities to further review the proposal and report back in three months. The state's commissioner of public health, Paul Cote, a Romney appointee, accepted blame for the gift bag controversy, saying that he had failed to alert his superiors of the proposal before the Public Health Council's December vote. The Board's action means that the controversy over the gift-bag ban will remain alive at least until May, with proponents of breastfeeding and industry preparing for further battle.

Breastfeeding advocates charged that Governor Mitt Romney is protecting industry interests at the expense of public health. Studies have shown that giving out these bags interferes with breastfeeding, causing moms to switch to formula sooner, or quit breastfeeding altogether – even when the bags do not contain formula samples. There is no medical justification for the institutional marketing of breastmilk substitutes to new parents.

* NEWS FLASH *

Excellent laws in Honduras and Mozambique

❖ It is official! In November 2005, Honduras adopted in a strong law – *Norma para el Fomento y Protección de la Lactancia Materna* (Law on Promotion and Protection of Breastfeeding). ICDC and colleagues from IBFAN Latin America contributed to the formulation and we are elated by this development in Central America. This law is very complete and can serve as a model for the Spanish speaking world.

❖ We are still awaiting confirmation about the actual signing into law of Mozambique's strong draft which is based on ICDC's Model Law. Cambodia's law, although based on the same blueprint has unfortunate additional text allowing the Ministry of Health to negate vital prohibitions.

