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ICDC LEGAL UPDATE

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STATE OF THE CODE
BY COUNTRY

STATE OF THE CODE
BY COMPANY



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A survey of marketing practices of infant food and feeding bottle
companies, compared to the requirements of the International Code of
Marketing of Breastmilk Substitutes

2004



From ICDC's desk in Penang:

The first half of 2004 was a hectic period with everyone in the office teaming up to bring out the international monitoring report - "*Breaking the Rules, Stretching the Rules 2004*". Although at times it looked like we were never going to meet our deadline, we did it yet again! This time it is a 94-page bumper issue filled with illustrations. Next, we were caught up with the 2004 World Health Assembly, monitoring training in Ghana and Bangladesh, and working on improving Code implementation in China and Mongolia. In between, we each took turns for a much needed break. Needless to say, many things were put on the backburner - this issue of the Legal Update for one, so we are catching up! We bring news of our BTR launch; the deferred campaign to get a resolution on claims, sponsorship and the risks of *Enterobacter sakazakii* at this year's World Health Assembly; our campaign against Nutricia for violating the Code in China and more. There's work to do on all fronts and we look forward to your continued support.

Yeong Joo Kean & Annelies Allain

BTR launch at the UK House of Commons in London



BTR team at the entrance to the House of Commons.

After 2 years of collecting evidence using the Standard IBFAN Monitoring (SIM) tools and 6 months of intensive work in analysing and compiling the facts, ***Breaking the Rules, Stretching the Rules 2004 (BTR)*** was launched at the UK parliament on 13 May 2004. The launch was hosted by Dr Lynne Jones, MP and member of the UK IBFAN group - Baby Milk Action which coordinated the launch.

BTR 2004 highlights the promotional practices of 16 transnational baby food companies and 14 bottle and teat companies between January 2002 and April 2004. It is based on reports by IBFAN groups working independently or with governments in 69 countries. The benchmark standards used for measuring marketing practices are the *International Code of Marketing of Breastmilk Substitutes* and relevant *World Health Assembly (WHA) resolutions*. More than 3,000 complaints were received from around the world and after legal checking, some 2,000 Code violations were analysed and reported on, company by company. The report also holds a selection of 712 pictures as illustrations of Code

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violations to show the latest trends in the marketing of breastmilk substitutes.

Other publications such as the 4-page **Overview of the BTR, the State of the Code by Country, State of the Code by Company** were launched at the same time. Country specific monitoring reports from the Anglophone African countries (Zimbabwe, Tanzania and Ghana), Thailand, China, Indonesia and Egypt in the **Look What They're Doing** series were also distributed. So far, the feedback on all publications has been very encouraging.

The launch of the BTR report was carried in the Guardian, the Financial Times, the British Medical Journal in the UK. Nestlé which has the dubious distinction as the company with the most number of violations recorded, dismissed the report as "allegations" in a statement to the British Medical Journal. A statement to the same effect was also published on the Nestlé website. Naturally, ICDC stands by its report.

Recently, the UN Non-Governmental Liaison Service show-cased the BTR report in their electronic publication – the Civil Society Observer (Volume I, issue 3, June-July 2004) – to demonstrate that NGOs have the capacity to produce compelling and valuable research and analysis. This is a well deserved accolade and the individuals who helped us in the fact and information gathering should know that their efforts are appreciated!

The immediate impact we see are increased Code activities in various countries. In Jakarta, for example, the local IBFAN group BK. PPASI is working on "bring back breastfeeding" campaigns with the Indonesian government, using the **Look What They're Doing in Indonesia** pamphlets.

Look What They're Doing in China was quoted by the China Daily as evidence that parents are receiving wrong messages on infant and young child feeding from advertising and from promotion in health facilities. Discussions took place in Beijing in July 2004 between the Chinese government, UNICEF, WHO and ICDC on ways to improve Code implementation in China. While all indications are that companies are continuing with their wicked ways to put infant health at risk through unethical marketing, it is also clear that legislation does make a difference. There are noticeably fewer violations in countries with laws than in those without. This fact alone is encouraging enough for us to continue our efforts in assisting countries to implement the Code.

Nutricia goes for "Gold" in China

In February 2004, in the midst of preparing the BTR, ICDC received information about a report in a Dutch TV programme which focused on a proposed promo-

tion campaign by Nutricia in China. The campaign involved the distribution of a CD containing Dutch children's songs translated into Chinese. Despite the one-child policy, China has 20 million babies per year, a huge market! The CD was an incentive to buy Nutricia formula. The news clip showed a slot of the Director of Nutricia China explaining that with the campaign, Nutricia has "gold" in its hands. On the grounds that the campaign violates both the International Code and Chinese law, ICDC issued an alert which launched a spate of protest and gave bad press to the company. Following that, the Director of Corporate Affairs of NUMICO (Nutricia's parent company), promised that Nutricia would modify its campaign so that the CDs will only be distributed with products not covered by the scope of the Code. Although ICDC is aware of NUMICO's narrow interpretation on scope, this concession was a victory of sorts.

Unfortunately in June, Nutricia broke its promise. ICDC received evidence that two mothers with infants of under 6 months had received the CD. So in July, we issued another alert denouncing Nutricia's practices. You can write to ICDC for the details or download it from <www.ibfan.org/english/pdfs/nutriciaalert0704.pdf>.



Front cover of the CD given to Chinese mothers in June 2004.

Assembly Takes Action on Adults, Babies Will Have to Wait

In May, the World Health Assembly adopted a Global Strategy on Diet, Physical Activity and Health for preventing deaths from problems affecting mostly adults, such as heart disease, diabetes, cancer and high blood pressure. The Assembly was so busy working out a compromise on the Diet issue, that there was hardly any time to debate infant feeding. A resolution tabled by developing countries and supported by IBFAN was deferred. The text called on Member States to issue warnings to parents and health professionals that powdered formulas for infants could be contaminated dur-

ing the manufacturing process by the bacterium *Enterobacter sakazakii*. This bacterium has in recent years been found to be the cause of outbreaks of serious illnesses such as meningitis, sepsis, necrotising enterocolitis, frequently causing death in newborns.

The deferred resolution also called for a ban on health and nutrition claims on labels and advertisements. Some claims suggest that a product improves the intellectual development or immunity levels which might influence mothers to choose the product over breastfeeding. The resolution was objected to on points of procedure brought by 6 industrialised countries where the leading infant formula industries are located. 16 developing countries spoke in favour of the resolution. Meanwhile, infants fed on breastmilk substitutes continue to be at risk. IBFAN will continue to advocate for support of the resolution.

Code implementation: Gabon introduces a new Decree

Gabon adopted a “*Decret No 000033/PR/MSP portant promotion, protection de l’allaitement maternel et réglementant la qualité, les méthodes de commercialisation ainsi que l’utilisation d’alimentation infantile en République Gabonaise*” (Decree No. 000033/PR/MSP on the Promotion and Protection of Breastfeeding and on Regulation of the Quality, Marketing Methods and Use of Infant Foods in Gabon) early this year.

The legal process took 11 years and much debate over the text. The Gabon Decree keeps diligently to the provisions of the International Code and, in so doing, repeats several of the Code’s weaknesses at the national level. The Decree has 36 articles and is divided into different chapters and sections. Quite a few important provisions appear to have been randomly allocated into chapters where they do not belong. This makes reading and comprehension of the Decree trickier than it should be and compromises clarity. There also appears to be some confusion as to what is meant by the term “breastmilk substitute”. In many provisions, the term “breastmilk substitute” is quoted alongside the term “infant formula” as if they are mutually exclusive. Although infant formula and the entire range of products listed under the scope of the Decree are all breastmilk substitutes, the text suggests otherwise.

There are, however, redeeming features such as the recommendation to exclusively breastfeed for 6 months; the requirement to give information on the appropriate use of complementary foods; the prohibition of any image or representation of an infant or other illustration that may idealise the use of a product and the requirement for age recommendation on labels. In addition, the inclusion of Consumer and NGO

representatives in the National Multisectoral Committee will make the implementation of the Decree a participatory process.

It is a pity that ICDC received the text *after* adoption by the Council of Ministers. ICDC could have pointed out relatively simple improvements in arrangement and content. However, as it is, the Decree will still put a stop to many unethical marketing practices of breastmilk substitutes. For that to happen there must be proper implementation and effective enforcement.

Strengthening the Code in Sri Lanka.

The Sri Lanka Code for the Promotion, Protection and Support of Breastfeeding and Marketing of Designated Products (SLC 2003) was issued by Commissioner of Internal Trade in April 2003 under the Consumer Protection Act. It amends and replaces an earlier directive issued in 1983. The drafters of the new Directive revised the text of SLC 1983 by polishing and tightening the language. New text introducing recommendations from subsequent World Health Assembly Resolutions is inserted in various places.

SLC 2003 is a credible attempt at strengthening an existing measure after a 20-year gap. There are still a few areas of weakness, some inherent, others could be due to language differences and translation into English. In particular, the term “complimentary foods” which appears time and again should read “complementary foods”. Other typographical errors do not seriously impede understanding or interpretation.

For SLC 2003 to work, it is important that the National Monitoring Committee starts its work. Independence of the body and its integrity must be protected by making sure that its composition does not include industry representatives. There should also be a national monitoring exercise to determine the effectiveness of SLC 2003.

Public interest litigation in Nepal

Everyone knows that legal provisions are meaningless if they are not implemented. In Nepal, the *Breast Milk Substitute (control of sale and distribution) Act 1992* was effectively a toothless tiger because the Government failed to appoint inspectors to enforce the law. Consequently, no distributor or manufacturer has been prosecuted or punished since the law passed in 1992 despite the many violations found. A local NGO in Nepal, Pro Public took the proactive step in filing a class action in the Supreme Court for a *mandamus* order to compel the government to appoint inspectors to enforce the Act and for named manufacturers and distributors to comply with the labelling provisions.

At the time of publication of this issue, we are still unaware of the outcome of the writ but the suit filed in 2002, is a landmark case brought by a citizen group to galvanise the letter and spirit of legislation in the interest of the public. Bravo!

The Public Eye on Davos – Blowing the whistle on Nestlé

ICDC's monitoring activities led to Joo Kean's participation at the international forum "The Public Eye on Davos" in January at the invitation of the Swiss NGO Berne Declaration. The annual event, held in conjunction with the World Economic Forum, enabled NGO experts, academics and politicians to provide a critical analysis of corporate-driven globalisation and present alternatives towards more equitable and sustainable world economic policies.

Joo Kean highlighted Code violations by Swiss food giant Nestlé. The company is a member of the UN Global Compact, which aims to improve corporate behaviour through a set of core values. She called for a review of the UN Global Compact and stressed the need for citizen movements to work on independent monitoring of the Code and of the core principles of the Global Compact.

Indian Law slows down sales

In the May 2003 issue of Legal Update, ICDC reported that the Indian Parliament had passed an amendment to the Infant Milk Substitutes, Feeding Bottles and Infant Foods Act which extends the ban on advertising and promotion to cover all commercial baby foods for babies under the age of two years. In August 2004, the online news service *Hindustanibusinessline.com* reported that the wide ranging ban has forced Nestlé to look for alternative distribution channels. Pushing sales growth in the infant food business - hitherto its key cash cow - may now prove a challenging task, the online news service reported. It forecasted that Nestlé stocks could be "susceptible to downside risks".

Soy baby formulas withdrawn in New Zealand

Following 9 years of pressure from Soy Information Service, 2 multinationals, Mead Johnson (Prosobee) and Abbott Ross (Isomil) withdrew their soy infant formula from the New Zealand market in January 2004. The

UK Government's Scientific Advisory Committee on Nutrition (SACN) stated that there is neither substantive medical need for, nor health benefit arising from the use of soy-based infant formulae. "While there is clear evidence of potential risk, there is no evidence that these products confer any health benefit".

The SACN expresses concern that parents are actually using these products to feed their infants upon the advice of health professionals.

Now that babies in New Zealand are no longer exposed to an unsafe product the question arises as to why babies elsewhere should not be similarly protected.

Humana settles product liability case

The cover story of the November 2003 issue of Legal Update focussed on the outbreak of thiamine deficiency in Israel which affected 15 infants including 2 deaths after using a soy based infant formula by the German company Humana. In what is billed as Israel's largest and speediest settlement in a negligence suit against manufacturers, the company paid an undisclosed amount (reported to be between US\$16 to US\$22 million) to the affected families. Israel's Health Ministry has since changed the classification of baby foods to pharmaceuticals. Unfortunately, no news of any attempt to revive stalled efforts to implement the Code to protect breastfeeding has been reported.

Announcements

ATC 2004. ICDC will hold its 8th Annual Training Course on Code Implementation from 20-28 September 2004 in Penang. Reflecting the international nature of the course, this year ICDC will receive participants from Armenia, Burkina Faso, China, Ghana, Hong Kong, India, Kenya, Korea, Malaysia, Mongolia, Romania, Russia, Saudi Arabia, Singapore and the USA.

Code Awareness Course East Asia. At the invitation of the Citizen's Alliance for Consumer Protection of Korea, ICDC will facilitate a Code training course for consumer groups from China, Mongolia, Japan and Korea from November 11 to 14.

RTC Pacific. Also, coming up in November – a Regional Training Course on Code implementation in collaboration with UNICEF and WHO's Western Pacific Regional Office (November 29 to December 3). The course will be held in Suva, Fiji.