

Breaking the Rules

Stretching the Rules

2004

Evidence of Violations of
the International Code of Marketing
of Breastmilk Substitutes and
subsequent Resolutions



International Baby Food Action Network

Breaking the Rules, Stretching the Rules 2004

Evidence of Violations of the International Code of Marketing of Breastmilk Substitutes and subsequent Resolutions.

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Breaking the Rules 2004 is based on results of worldwide continuous monitoring between January 2002 to April 2004, using the Standard IBFAN Monitoring tool, SIM.

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Executive Summary

“Virtually all mothers can breastfeed provided they have accurate information, and support within their families and communities and from the health care system”

Dr. Lee Jong-Wook

Director General of WHO in his call on governments to promote, protect and support breastfeeding at the launch of the Global Strategy on Infant and Young Child Feeding
23 March 2004

The Strategy pinpoints the main problems affecting infant and young child feeding and identifies implementation and monitoring of the International Code and subsequent resolutions as a key area requiring action.

Article 44 of the Global Strategy sets out the responsibility of companies:

“Manufacturers and distributors of industrially processed foods for infants and young children... should ensure that... (these products) meet applicable Codex Alimentarius standards... They should (also) ensure that their conduct at every level conforms to the Code, subsequent relevant Health Assembly resolutions, and national measures that have been adopted to give effect to both.”

Every three years, IBFAN publishes a report on compliance with the International Code of Marketing of Breastmilk Substitutes and relevant World Health Assembly Resolutions. The 2004 report, *“Breaking the Rules – Stretching the Rules”*, is organised by company in alphabetical order and follows different Code themes within the write-up of each company. This summary highlights the marketing trends over the past three or four years.

Health facilities still come out to be the preferred avenue for companies to reach mothers. This is especially so in countries which have not implemented the Code or where measures are inadequate. Countries with strong measures which are properly enforced are better at keeping company promotion out of health facilities. The scourge of supplies (donations of formula) and samples remain a major problem area with companies competing to receive equal and sometimes exclusive treatment by hospitals. Distribution and display of company materials is widespread and as in the case of supplies and samples, these are more prevalent in countries where purchasing power is high like UAE, Singapore and Hong Kong.

Closely intertwined with promotion in health facilities is the pursuit of health professionals by companies. One country – Thailand – sticks out with companies vying to entice doctors and nurses with innovative gifts in varieties and numbers not seen elsewhere. Mothers too are deluged with gifts during their stay in hospital and when they return for check-ups. This happens because the voluntary code in Thailand has expired and with no other instrument in place to provide a level playing field, companies compete ruthlessly to expand their market share. All of this comes at a price to the health care system, not to mention the health of infants.

The problem of promotion in health facilities is compounded by the fact that the Code is weak in certain areas. Companies exploit these weaknesses by pushing at the boundaries of what is allowed. One striking example is informational materials for health professionals. Since information to mothers is restricted, companies adeptly mark materials as ‘information for health professionals’, list the required statements and warnings in small print while the text is addressed to mothers. Such attractive company materials are often supplied in bulk to health facilities, testimony to the fact that mothers are intended as the captive audience. One company, Nestlé, even states on its materials that the item is intended for health professionals for distribution to mothers!

Claims which ride on “closeness to breastmilk” abound in advertisements, leaflets and the so-called scientific and factual information for health professionals. The one dominant theme over this period was the emphasis on fatty acids such as DHA/ARA, naturally found in breastmilk, but imitated (derived from fungi, algae or fish oil) and added to formula to purportedly make babies smarter. Eleven out of the 16 international companies included in this report jumped on the bandwagon of selling ‘intelligence in a bottle’. All are cashing in on the emotional desires of parents to have smart children.

In many parts of the world, parents are willing to pay extra for the IQ promise. It is estimated that infant formula supplemented with fatty acids cost parents an additional US\$200 a year as these products are priced 15 to 30% more than standard formula. There are no independent long term studies to substantiate the benefits of added DHA/ARA to formula. Only recently have regulating agencies started to act. In April 2004, Canada's Food Inspection Agency ordered Mead Johnson to stop claims about the effect of DHA & ARA in its Enfamil products. It is expected that other governments will take similar action. Apart from the IQ springboard, companies also harp on how other added ingredients bring a product 'closer to breastmilk' and boost baby's immunity to disease, promote healthy growth, etc. All these misleading claims are promotional in nature and prohibited by the Code.

The issues of conflicts of interest and medical ethics come to head when doctors, nurses, midwives and their professional associations receive handouts ranging from gifts of little consequence to big grants from industry.

The impact on professional integrity is far-reaching. Monitoring reveals an increasing number of health professionals becoming addicted to company donations and sponsorship. China with its 19 million new babies annually will be the next unsuspecting target of companies in this respect. The fact that the country has more than half of the world's Baby Friendly health facilities will have little meaning unless the national law based on the Code is properly implemented and enforced.

Although prevalent, Internet advertising did not out-strip other forms of promotion as was initially feared. In a positive development, some companies have actually removed blatantly promotional content from their web-site, and others have restricted their web-pages to health professionals.

Where labelling is concerned, long and tough battles will need to be waged at the Codex Alimentarius Commission before health, functional and nutrition claims which idealise products become things of the past. Several forced recalls of products contaminated with the deadly *Enterobacter sakazakii*, indicate the need for labels to warn that no formula is sterile. Labelling saw greater compliance when Nestlé took a long awaited lead in labelling its complementary foods from "six months"; implementing the global recommendation for six months exclusive breastfeeding. The company, however, needs to prove its sincerity in upholding the WHO recommendation by applying it to all countries and by keeping its Blue Bear complementary food mascot out of health facilities.

Other companies, meanwhile, behave as if the several World Health Assembly Resolutions on "six months" do not exist. This 'head in the sand' approach generally applies to the interpretation of the scope of the Code with many companies sticking to the indefensible stand that the Code applies only to infant formula, not to "other products which are marketed or represented as breastmilk substitutes". This narrow interpretation accounts for a sizeable chunk of violations reported.

Feeding bottles and teats. Unlike the past reports, **Breaking the Rules 2004** gives only illustrations of violations involving feeding bottles and teats and does not give a company by company account. This in no way deflects from the severity of the violations by manufacturers of feeding bottles and teats. A table summarises the performance of 14 major companies vis-à-vis the relevant Code provisions.

The final "*Stretching the Rules*" section features some practices which discourage breastfeeding but do not directly violate the Code. Mostly, these practices involve 'formula for mothers' or 'growing-up milks'.

How does DHA- ARA get into formula?

"Infant formula is currently a commodity market, with all products being almost identical and marketers competing intensely to differentiate their products. Even if Formulaid (the blend of fatty acids, DHA-ARA) has NO benefit, we think it would be widely incorporated into formula, as a marketing tool and to allow companies to promote their formula as 'closest to human milk'."

Note: The company which wrote the above in early 2002 is Martek, the main supplier of oils and other additives to most formula makers. Martek's sales went up 183% in 9 months. It took independent researchers 2 more years to establish that the added fatty acids have no definite benefits.

Introduction

Breaking the Rules, Stretching the Rules 2004 is based on evidence collected between Jan 2002 to April 2004. The 'Rules' are the benchmark standard provisions of the International Code of Marketing of Breastmilk Substitutes and related World Health Assembly resolutions.

Contrary to other years, monitoring was not organised by region, nor did it result from a worldwide training of coordinators from selected countries as was the case in 2001. *Breaking the Rules 2004 (BTR)* is the first major outcome of **SIM**, the *Standard IBFAN Monitoring* tool which aims at popularising monitoring, yet maintaining standard questionnaires so that groups and individuals use the same protocol to report evidence from wherever they are. Reporting is flexible. It can be electronic with digital forms and digital pictures or it can be manual with handwritten notes and actual specimen. With **SIM**, everyone can be a monitor. Results were first checked, translated and collated by four collection centres in Europe, Latin America and Asia. They were then merged into one large database and underwent thorough legal and factual checking by ICDC, before being sorted by company and by type of violation. In total, more than 3000 reports were received from 69 countries, some only with very sparse information, others with hundreds of entries each.*

During the period under review, a few countries wanted to do monitoring as a national exercise. Training with **SIM** was provided by IBFAN-ICDC under the auspices of national governments and/or UNICEF field offices. Although the results were primarily meant for national reports, they obviously fed easily into the BTR collection. This was the case for Indonesia, China and Thailand. (See the separate "*Look what they're doing*" reports). IBFAN Latin America held a short training course for volunteer monitors and has published a 20 page "*Look what they're doing in Latin America*" report in Spanish. IBFAN Europe used seed grants to motivate some groups to do monitoring while IBFAN Africa coordinated its own monitoring. All shared their results for this worldwide report.

SIM is not designed to obtain statistical information nor is it meant to provide full information on any one company or any one region. In fact, reports covered a total of 176 companies but many were found to be subsidiaries of transnationals or local distributors. To provide continuity and the possibility of assessing progress, it was decided to continue in this BTR with the same list of the 16 largest companies as in previous reports.

The progress in digital technology meant that many monitors were able to send in scanned pictures and digital photographs. There was such a wealth of images that only about one third could be reproduced and even then they had to be shrunk to fit. For each violation reported, there are at least ten others that went unnoticed. Private deals, pay-offs and agreements escape the public eye completely. And for

"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 kind."

Stephen Lewis
Deputy Executive Director
UNICEF
April 1999

* All data were reviewed and double-checked. Entries not sufficiently substantiated by evidence were rejected. All efforts were made to verify the accuracy of this report but any errors remain the responsibility of the editors.

each violation reported, one can be sure there are thousands more of the same because companies mass-produce their materials and labels. In other words the contents represent the proverbial ‘tip of the iceberg’.

BACKGROUND

The International Code was adopted in 1981 as a “*minimum*” standard to help protect and promote breastfeeding in all countries. Its preamble explains that “*the marketing of breastmilk substitutes requires special treatment which makes usual marketing practices unsuitable for these products*”. The Code, summarized overleaf, spells out which marketing practices should be discontinued. Since its adoption, the Code has been re-affirmed by the World Health Assembly (WHA) on at least 15 occasions and new Resolutions with the same legal status as the Code have been adopted to clarify certain provisions and to attempt to keep up with changing products and practices. One of the aims of ***Breaking the Rules*** is to inform the WHA of the status of compliance with its recommendations and of the new trends in marketing.

Scientific evidence from hundreds of studies over the past twenty years confirms that breastfeeding — and especially exclusive breastfeeding during the first six months — is the optimal way to nourish and nurture infants. Breastmilk contains all the essential nutrients as well as antibodies that counter infection. No infant formula made of cow’s milk, soy or other ingredients can ever equal this natural way of feeding. Human milk decreases risks for a large number of acute and chronic diseases including diarrhoea and respiratory infection. Breastfeeding provides all necessary nutrients and liquids for six months, it supplies half the baby’s nutritional requirements between six and 12 months and up to one third between 12 and 24 months. Even in the most affluent conditions, where water is clean and mothers are highly educated, an artificially fed infant is more likely to suffer from respiratory illnesses, gastrointestinal infections, and allergies. The risk of HIV infection through breastfeeding certainly exists, but it has been established that *not* breastfeeding can lead to a six-fold increase in infant mortality due to infectious diseases.

IBFAN is often asked whether it is not frustrating to do Code monitoring and keep on finding violations? Yes it is, but without watchdogs the Code would be a mere piece of paper. The network also knows that it does make a difference, a big difference. IBFAN’s evidence is being used by international organisations and ethical investment companies and manufacturers are increasingly being challenged about their social responsibility and observance of human rights. Where there are no laws, or where laws are not enforced, independent monitoring is the only way of putting pressure on companies to behave, the only way of teaching consumers about new tactics, of informing health professionals about the latest propaganda. If there were no independent monitoring, companies would not need to look over their shoulders and promotion would be much worse.

In addition to reporting, monitoring also allows action. Over the past year alone, monitoring has led to at least one conviction in court, (*Wyeth in the UK was fined £60,000 for illegal advertising*) to a change in a big commercial campaign (*Gerber in Trinidad and Tobago*) and to the suspension of another (*Nutricia in China*), to a retraction of claims (*Mead Johnson in Canada*) and to apologies (*Mead Johnson in Malaysia*) as well as to revisions in company materials (*Nestlé in China and Ghana*). Each one of these was started by one individual saying: “Hey, this is not right” and, through IBFAN, knowing that she can rely on others for support and help to build sufficient pressure for change. Governments as far apart as Brazil, India and Iran have demonstrated that strong laws can change labels, that advertising can be stopped and that companies will obey the rule of the land if there is political will to enforce it. IBFAN is committed to continue checking who is “Breaking the Rules”.

Children who are not exclusively breastfed for 6 months are more at risk for the following diseases, illnesses, and conditions:

- About 40% more likely to develop type 1 diabetes.
- About 25% more likely to become overweight or obese.
- About 60% more likely to suffer from recurrent ear infections.
- About 30% more likely to suffer from leukemia.
- About 100% more likely to suffer from diarrhoea.
- About 250% more likely to be hospitalized for respiratory infections like asthma and pneumonia.

These statistics were removed from messages and ads designed to show the risks of NOT breastfeeding during the ***National Breastfeeding Awareness Campaign*** by the US Department of Health.

The percentages and the two references to the risks of leukemia and diabetes were removed, NOT because there was insufficient scientific evidence but because of enormous pressure by Mead Johnson and Abbott-Ross, the two largest American formula makers.

It might make mothers feel guilty, said the companies. If it is the truth, said health professionals, we cannot withhold information from our patients. If we want to encourage people to wear seatbelts, we do also give them information about what might happen if you don’t, so why not with breastfeeding.



WHO

The International Code of Marketing of Breastmilk Substitutes & Subsequent World Health Assembly Resolutions

SUMMARY

'Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in all countries, and improper practices in the marketing of breastmilk substitutes and related products can contribute to these major public health problems.' CODE PREAMBLE

The International Code was adopted by the World Health Assembly on 21 May 1981. It is intended to be adopted as a *minimum requirement* by all governments and aims to protect infant health by preventing inappropriate marketing of breastmilk substitutes.

SCOPE

The Code covers the marketing of *all* breastmilk substitutes (Article 2).

These include:

- infant formula (including so-called 'special' baby milks such as 'hypo-allergenic' formula, preterm milks and others);
- follow-up milks;
- complementary foods such as cereals, teas and juices, water and other baby foods marketed for use before the baby is six months old.

The Code also covers feeding bottles and teats. (Articles 2, 3 and WHA 54.2 [2001]).

PROVISION OF CLEAR INFORMATION

Informational and educational materials dealing with the feeding of infants and intended to reach health professionals, pregnant women and mothers of infants and young children, should include clear information on all the following points:

- a) the benefits and superiority of breastfeeding;
- b) maternal nutrition and the preparation for and maintenance of breastfeeding;
- c) the negative effect on breastfeeding of introducing partial bottle feeding;

- d) the difficulty of reversing the decision not to breastfeed; and
- e) where needed, the proper use of infant formula.

When such materials contain information about the use of infant formula, they should include:

- a) the social and financial implications of its use;
- b) the health hazards of inappropriate foods or feeding methods;
- c) the health hazards of unnecessary or improper use of infant formula and other breastmilk substitutes.

Such materials should not use pictures or text, which may idealise the use of breastmilk substitutes (Articles 4.2 and 7.2).

NO PROMOTION TO THE PUBLIC

There should be no advertising or other form of promotion to the general public of products within the scope of the Code. There should be no point-of-sale advertising, giving of samples or any other promotional device to induce sales directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales. Marketing personnel should not seek direct or indirect contact with pregnant women or with mothers of infants and young children (Article 5).

NO GIFTS TO MOTHERS OR HEALTH WORKERS

Manufacturers and distributors should not distribute to pregnant women or mothers of infants and young children any gifts of articles or utensils, which may promote the use of breastmilk substitutes or bottle feeding. No financial or material inducements to promote products within the scope of the Code should be offered to health workers or members of their families. Financial support for professionals working in infant and young child health should not create conflicts of interest (Articles 5.4, 7.3, WHA 49.15 [1996]).

NO PROMOTION TO HEALTH CARE FACILITIES

Facilities of health care systems should not be used to promote infant formula or other products within the scope of the Code. Nor should they be used for the display of products, or placards or posters concerning such products, or for the distribution of material bearing the brand name of products covered by the Code (Articles 6.2, 6.3, 4.3).

NO PROMOTION TO HEALTH WORKERS

Information provided to health professionals by manufacturers and distributors regarding products covered by the Code should be restricted to

International Code Health Assembly Resolutions



scientific and factual matters, and should not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding. Samples of products covered by the Code, or equipment or utensils for their preparation or use, should not be provided to health workers except where necessary for professional evaluation or research at the institutional level (Articles 7.2, 7.4, WHA 49.15 [1996]).

NO FREE SAMPLES OR SUPPLIES

Neither manufacturers nor health workers should give pregnant women or mothers of infants and young children, samples of products covered by the Code. Free or low-cost supplies of breastmilk substitutes should not be given to any part of the health care system which includes maternity wards, hospitals, nurseries and child care institutions. Donated supplies in support of emergency relief operations should only be given for infants who have to be fed on breastmilk substitutes and should continue for as long as the infants concerned need them.

Supplies should not be used as a sales inducement (Articles 5.2, 7.4). Note: Articles 6.6 and 6.7 of the Code have been superseded by WHA Resolutions 39.28 (1986), WHA 45.34 (1992) and WHA 47.5 (1994).

NO PROMOTION OF COMPLEMENTARY FOODS BEFORE THEY ARE NEEDED

It is important that infants be exclusively breastfed for six months and only receive safe and appropriate complementary foods thereafter. Every effort should be made to use locally available foods. Any

food or drink given before complementary feeding is nutritionally required may interfere with the initiation or maintenance of breastfeeding and therefore should not be promoted for use by infants during this period. Complementary foods should not be marketed in ways that undermine exclusive and sustained breastfeeding. Breastfeeding should continue for up to two years and beyond. (Code Preamble; WHA Resolution 39.28 [1986], WHA 45.34 [1992] and WHA 47.5 [1994], WHA 49.15 [1996], WHA 54.2 [2001]).

ADEQUATE LABELS: CLEAR INFORMATION, NO PROMOTION, NO BABY PICTURES

Labels should provide the necessary information about the appropriate use of the product, and should not discourage breastfeeding. Infant formula manufacturers should ensure that each container has a clear, conspicuous and easily readable message in an appropriate language, which includes all the following points:

- a) the words "Important Notice" or their equivalent;
- b) a statement about the superiority of breastfeeding;
- c) a statement that the product should only be used on the advice of a health worker as to the need for its use and the proper method of use; and
- d) instructions for appropriate preparation, and a warning of the health hazards of inappropriate preparation.

Neither the container nor the label should have pictures of infants, or other pictures or text which may idealise the use of infant formula. The terms

'humanised', 'maternalised' or similar terms should not be used (Articles 9.1, 9.2).

CODEX STANDARDS

The Codex Alimentarius Commission must continue to improve the quality standards of processed foods for infants and young children and to promote their safe and proper use at an appropriate age, including through adequate labelling, consistent with the International Code, resolution WHA 54.2, and other relevant resolutions of the Health Assembly (WHA 55.25 [2002]).

COMPANIES MUST COMPLY WITH THE INTERNATIONAL CODE

Monitoring the application of the International Code and subsequent Resolutions should be carried out in a transparent, independent manner, free from commercial influence (WHA 49.15 [1996]).

Independently of any other measures taken for implementation of the Code, manufacturers and distributors of products covered by the Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of the Code. Manufacturers should take steps to ensure that their conduct at every level conforms to all provisions above (Article 11.3).

*For the full text, see:
[www.ibfan.org/English/resource/
who/fullcode.html](http://www.ibfan.org/English/resource/who/fullcode.html)*