

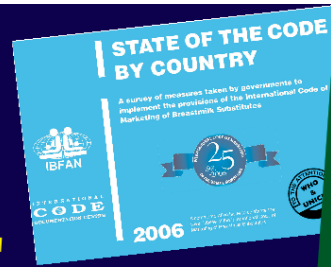


IBFAN
INTERNATIONAL
CODE
DOCUMENTATION CENTRE

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

Sept 2008

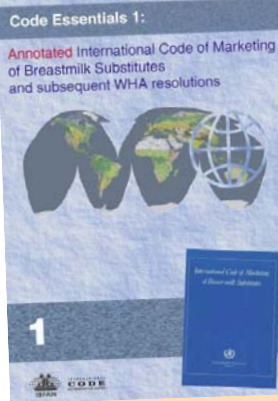


From ICDC's desk in Penang...

Annelies Allain and Yeong Joo Kean, the regular editors of Legal Update, are busy assisting countries with Code implementation and therefore I will take care of this edition of Legal Update. It will feature 'innovative' ways in which companies are circumventing the Code but not all is doom and gloom as the story on Evenflo will show.

We would also like to announce an upcoming publication, *Code Essentials 1: Annotated International Code of Marketing of Breastmilk Substitutes and subsequent WHA resolutions* which is the first in a series of three Code publications ICDC has been commissioned to produce under a contract with UNICEF and WHO.

Raja Abdul Razak
Publication Support



Sneaking around the Code: Nestlé style

Nestlé tries valiantly to portray that it respects the Code, but the situation on the ground shows otherwise. Just when you thought that companies have tried every trick in the trade, along comes another outrageous gimmick.

Vietnam: Rent-a-dazzle

Take the example of this announcement circulated to shops in Vietnam. It is a scheme whereby Nestlé rents prime display space in shops and dictates the placement (at eye level) and the minimum quantity of formula products to be displayed. The products involved are **AL 110**, **Pre NAN**, **NAN 1**, **NAN 2**, **Lactogen 1** and **Lactogen 2**, all of which come under the scope of the Vietnamese Decree, which gives effect to the International Code. Shopkeepers are given four display options: **diamond** (124 tins; rental value 700,000 VND or US\$43/-), **platinum** (64 tins; rental value 300,000 VND or US\$19/-), **gold** (34 tins; rental value 150,000 VND or US\$9/-) and **silver** (24 tins; rental value 100,000 VND or US\$6/-). Nestlé determines the quantity of each brand to be displayed under each of the four categories. For the diamond and

CÁI LẠC BỘ DINH DƯỠNG NESTLÉ (NUTRITION CLUB)
(từ ngày 01/01/2008 đến 30/06/2008)

Kim Cương, Bạch Kim, Vàng, Bạc

VẬT DỤNG TRANG TRÍ KÈ

Hướng dẫn trưng bày

Kim Cương Vàng
 Bạch Kim Bạc

CÁI LẠC BỘ DINH DƯỠNG NESTLÉ (NUTRITION CLUB)
(từ ngày 01/01/2008 đến 30/06/2008)

MÃ SỐ CHƯƠNG TRÌNH: MIS 002 2008
Hôm nay, ngày 02 tháng 01 năm 2008
Bên A: Nhà Phân Phối

Địa chỉ: _____
Bên B: Tên chủ cửa hàng _____
Địa chỉ số: Số _____ Đường _____ Tỉnh/TP _____ Phường/Xã _____
Bên A giới thiệu chương trình cho thuê diện tích trưng bày sản phẩm sữa Nestlé với 01 trong 04 hướng dẫn trưng bày như sau:

Hương Dẫn	Số mặt trưng bày tối thiểu												Giá trị thuê tháng VND				
	AL 110	Pre NAN 400g	NAN 1 900g	NAN 2 400g	NAN 2 900g	NAN 1 HA 400g	NAN 2 HA 400g	NAN 3 400g	Lact 1 350g	Lact 2 350g	Lact 1 700g	Lact 2 700g		Tổng số			
Kim Cương	04	04	18	08	18	08	04	04	08	08	08	08	06	04	124	700.000	
Bạch Kim	02	02	08	04	08	04	04	04	05	05	04	04	04	02	02	64	300.000
Vàng	01	02	01	02	01	01	01	02	01	04	04	04	02	04	02	34	150.000
Bạc	01	01	01	01	01	01	01	01	01	04	04	04	02	02	24	100.000	

(Top) Display options: Diamond, Platinum, Gold or Silver. Take your pick.
(Below) Standard agreement sets out quantity of tins for each display and rental payment due which is offset by 'coupons' offering products in lieu.

platinum displays, Nestlé gets to issue instructions on the decor of the displays and will support the shops with an unspecified nutrition programme. Payment for rental space is a convoluted arrangement whereby a 'coupon-receipt' will be issued to shops each month for exchange with Nestlé products.

This scheme allows Nestlé to secure special displays in shops and to outwit the competition at the same time. The ultimate target are of course unsuspecting mothers. Special displays are a promotional device prohibited by Article 5.3 of the Code. The health authorities in Vietnam have confirmed with ICDC that this practice is also a violation of their national decree.

USA: 'Babymoon' package promotes formula

When expecting couples check in under *The Baby's on the Way* 4 Days/3 Nights Babymoon package advertised in the South Carolina Planter's Inn website, they will receive gifts including a stylish insulated backpack from Nestlé complete with baby formula, a baby bottle and information on infant care.

Nestlé claimed that it was not responsible as it was a promotion arranged by the hotel and a public relations agency in New York. This was contradicted by the hotel, which claimed that 'a formula company' had contacted the hotel's PR firm to offer the backpack with its "goodies" free of charge. Whatever the truth may be, Nestlé went on to say that the formula had expired and that it had been removed from the bags.

The explanation was disturbing as –

- giving out samples of formula is a Code violation;
- giving expired formula is worse;
- giving a backpack constitutes a gift to mothers, which is also prohibited by the Code.

After protests from several quarters, the hotel realised it was being used as a marketing agent and stopped the free formula. The revised promotional page still welcomes parents-to-be but the paragraph on Nestlé has been expunged.

Australia: My mummy got the right formula

If you cannot advertise blatantly, the next best thing is to be calculatedly ambivalent about the product you are pushing. This Nestlé advertisement from Australia is an excellent example of how sellers can bypass advertising restrictions.

GETTING OFF TO THE BEST START

There's no doubt that breast milk gives your baby the best start in life. After all, it's a wholesome nutritional food, rich in antibodies to help boost your baby's immune system & ward off infections & harmful bacteria, plus rich in omega-3 and omega-6 which may help with healthy development. Probiotics, such as Bifidobacteria, are also naturally found in breastmilk and these "good" bugs help to boost immunity.

For babies that are not breastfed or partially breastfed, Infant Formulae are the next best option for optimal nutrition. They contain proteins, carbohydrates, fats, and all the vitamins and minerals essential for healthy growth and development.

Infants fed Infant Formulae typically have less "good" bacteria in their tummy compared to wholly breastfed infants. In this instance, Infant Formulae containing Probiotics such as Bifidobacteria have been clinically proven to give a natural boost to a baby's immune system and helps protect them from those nasty tummy bugs that cause diarrhoea.

Breastfeeding gives your baby the perfect start in life, but the next best thing for optimal nutrition is a suitable Infant Formula.

FOR YOUR FREE GUIDE ON CHOOSING THE RIGHT FORMULA FOR YOUR BABY CALL 800 448 8726 OR VISIT OUR WEBSITE WWW.NESTLE.COM.AU/INFANT

Nestlé Nutrition

The World Health Organization (WHO) recommends that pregnant women and new mothers be informed of the benefits and superiority of breast feeding – particularly the first 6 months – and the importance of a well-balanced diet both during pregnancy and after delivery. Conversely, avoidance of partial breastfeeding or other foods and drinks should be discouraged since it will have a negative effect on breast feeding. Mothers should be warned of the danger of feeding by spoon or bottle. Before offering a mother to use an infant formula, she should be advised of the potential cost increase of the baby's health care. If a mother is unable to breastfeed, she should be advised that breast milk is not only the best, but also the most economical food for babies. If a mother is unable to breastfeed, it is important to give her information on correct preparation methods, including the use of sterilized bottles, or prepared dilution can be used to make.

Health Australia Ltd, Hawthorn East Drive, Rhodes NSW 2128, 800 448 8726, www.nestle.com.au/infant

Reference: 1. Lomax & Lomax, 2002, Breastfeeding: A Guide for the Health Professions, 6th Edition, Elsevier, Sydney; 2. Guzman-Molina et al, Breastfeeding: A Guide for the Health Professions, 6th Edition, Elsevier, Sydney; 3. Longtin et al, The World Health Organization, 1993, 21, 17-18.

Zoom in on the ad. The double entente becomes quickly apparent with the slogan emblazoned on the bib "My mummy got the right formula". As breastmilk is never referred to as a 'formula', it becomes quite obvious it is a Nestlé infant formula, even if no mention is made of the brand.

Nestlé denied that the ad is a violation as it "clearly highlighted the benefits and superiority of breastfeeding".

What the ad actually did (the company told us the ad was stopped now) was to compare infant formula favourably with breastmilk claiming that it has all the essential vitamins and minerals, naturally boosts the immune system, helps protect from diarrhoea, etc.

The juxtaposition of the phrases "the best start" and "the right formula" are deliberately confusing. Who can blame mothers for thinking that the best start is in fact a Nestlé formula, even if no brand name is indicated.

HOME DIRECTIONS CONTACT WEATHER E-BROCHURE GIFT CERTIFICATES ACCOLADES SPECIALS SIGN-UP BEST RATE GUARANTEE

PLANTERS INN
SINCE 1884

ACCOMMODATIONS
GUEST SERVICES
PHOTO GALLERY
RESERVATIONS
PACKAGES
MEETINGS & EVENTS
PENINSULA GRILL
ABOUT CHARLESTON

RESERVATIONS

Planters Inn Packages

Travel Agents

Packages

The Baby's on the Way 4 Days / 3 Nights

Our "babymoon" package offers a great opportunity for the expecting couple to have one last trip before the family grows.

The Baby's on the Way package includes three nights' accommodation in a luxury guest room or suite, as well as Peninsula Grill's gourmet breakfast for the morning. Upon your arrival, you will find a basket of Charleston specialty gifts and bottled water for your enjoyment, as well as a signature Planter's Inn bear for the enjoyment of your growing family. A jar of pickles for the expectant mother and a cigar and cognac for the father-to-be are included as "tongue-in-cheek" gifts. Nestlé, upon learning of this package, has included a stylish insulated backpack complete with baby formula, a baby bottle, and information on infant care.

Check in: Jan 8, 2008

Adults: 1, Children: 0

Check Availability

We offer a selection of movies for a quiet evening together, as well as extra pillows and a body pillow. Evening turndown service is enhanced with gourmet ice cream for the expectant mother and a slice of Peninsula Grill's renowned coconut cake for the father.

We include a one-hour massage on a specially designed pillow with a

New WHA resolution

This year's World Health Assembly adopted a resolution to strengthen implementation of the International Code and subsequent resolutions. WHA 61.20 urges Member States to

- scale up efforts to monitor and enforce national measures in order to protect breastfeeding
- to increase support for early initiation and exclusive breastfeeding for the first 6 months of life
- implement the WHO/FAO guidelines on safe preparation, storage and handling
- to use appropriate regulatory measures to reduce the risk of intrinsic contamination of powdered infant formula by *Enterobacter sakazakii* and other pathogenic microorganisms during the manufacturing process

The entire resolution is on www.ibfan.org

Nothing more than a promotion in disguise

Because growing-up milks do not come under the scope of the Malaysian Code, baby food companies invented them to pry open doors otherwise closed to them. These products may be largely unnecessary, but manufacturers continue to trot out claims running the gamut from brain development and enhanced mental capacity to superior immunity. What parent would not want all these advantages for their child?

This ad featuring a Dumex baby contest to commemorate the company's 50th anniversary takes a different approach. The ad made an appearance recently in Malaysian dailies and on the Dumex website. Contestants are required to send pictures of babies 1 year and above to win attractive prizes worth RM400,000 (US\$120,000), the top prize being RM50,000 (US\$15,000) in cash and a trip to Tokyo Disneyland for a family of five.

To participate in the contest, participants are required to attach a Dumex 50th anniversary logo available on a range of milk products for babies over 1 year such as **Dugro 1 Plus**, **3 Plus** and **6 Plus**. The entry form which accompanies the ad also serves as a market survey as it requires participants to state which milk brand they are using now. By holding such a competition, Dumex's intentions are pretty clear. Not only are they promoting the use of milks for toddlers, they are also associating happy, beaming children with the product and the company.

Protest had effect

The ad provoked the ire of many breastfeeding advocates as well as the company's competitors. The Malaysian Ministry of Health was alerted to the ad which many felt went against the spirit and aim of the National Breastfeeding Policy which seeks to protect breastfeeding for children up to two years. The ripples of protest had an effect. Shortly after the original ad appeared, Dumex released the same ad in the print and electronic media with several important modifications. They are:

1. Changing the minimum age of contestants to three years instead of one year.
2. Replacing the pack shot of Dugro 1 Plus marketed for babies one year and above with Dugro 3 Plus for children over 3.

The reference to Dugro 1 Plus in small print was not changed and the 50th anniversary logo is still available from Dugro 1 Plus. The changes made by Dumex to the ad are however a small victory as a result of citizen vigilance. It demonstrates that when individuals or communities get informed and dedicate themselves to stopping unethical business practices, they can engage and even win against giants!

Dumex responded to ICDC's complaint saying that "as good corporate citizens, Dumex has moved the entry age from 1 to 3 years old, in support of the government's initiative in promoting breastfeeding for as long as possible. We fully endorse the government's initiatives in promoting breastfeeding, and will render whatever support we can to encourage mothers to breastfeed."

When asked why the Dugro 1 Plus reference remained (picture 3), Dumex explained that it was tied in with the celebration of Dumex's 50th anniversary. So much for good corporate citizens.



2



3



The original ad (left). After complaints, minimum age changed from 1 year to 3 years (pic 1) and the pack shot shown is Dugro 3 instead of Dugro 1 (pic 2). However, the reference to Dugro 1 remained. See pic 3.

Evenflo: improving Code compliance

Can companies selling products under the scope of Code become fully Code compliant?

Evenflo, a US feeding bottle and teat company, is trying hard. Here is the story:

From Code violator to Code compliant?

Evenflo, which recently bought up breast pump maker Ameda (a brand much liked by lactation consultants) has endeavoured to comply with the Code in the marketing and labelling of those of its products that come under the scope of the Code. In October 2007, the company sought direct assistance and input from IBFAN's United States chapter, the National Alliance for Breastfeeding Advocacy (NABA). In turn, NABA consulted ICDC and INFACT Canada.

Initially, Evenflo agreed to the following changes:

1. Removal of all images of bottles, teats and babies on product packaging and text and other images that idealise bottle feeding (see pictures A to C, opposite);
2. Cease advertising bottles and teats to consumers and giving breastfeeding advice on their web site;

After long discussions and a meeting between Evenflo's CEO, NABA and INFACT Canada, the company agreed to additional changes, which will be implemented over six months from July 2008. The major ones are:

3. Removing the slogan "Committed to Breastfeeding" and associated mother and child logo (see D)
4. Changing the "Best for Baby" slogan on all products within the scope of the Code to "Breastfeeding Best for Baby" (see E).

These changes will not apply to products such as breast pumps. More dialogue and assessment of the scientific data are required to fully determine the role of breast pumps in the support of breastfeeding and providing breastmilk to infants and young children to gauge the marketing impact.

Towards Code compliance and beyond

NABA, which monitors the Code in the US and prepares the country reports, has worked tirelessly for months in convincing Evenflo to change the marketing and labelling of relevant products with a view towards full Code compliance. To a large extent, the efforts have paid off. Both sides should be congratulated on the positive results of the careful and unprecedented negotiations they undertook in good faith to improve the protection of breastfeeding.

Although acknowledgement about improved company practices should not be perceived as an endorsement of a company that sells products which discourage breastfeeding, as Code custodians, we must give credit to Evenflo for aligning itself with the spirit and intent of the Code.

Only time will tell if the company will be fully adherent to the Code and subsequent resolutions. ICDC urges Evenflo to fulfil its promise to make the changes it said it would and to extend those changes to all products that fall under the scope of the Code so there is no conflict in its public

messages. It should also ensure that the standard of conduct it has put in motion is maintained and improved upon in years to come.

The process of negotiating improvements in Code compliance will continue to facilitate some remaining areas of concern. There are other relatively minute changes which ICDC would wish Evenflo to make to phrases on the label which it deems idealising and the NABA–Evenflo dialogue should continue to enable further improvements to the company's marketing practices. Importantly, those working with Evenflo to assist in achieving Code consistent practices and compliance are committed to monitoring and reporting any variances from Code standards.

Being the first bottle and teat company ever to change its actions to become more Code compliant, Evenflo can and should set an example for other companies to emulate.

Will Pigeon, the Japanese feeding bottle and teat giant, also come on board?



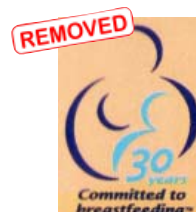
A-No more images of bottle feeding on the new label for Silicone Nipples (left).



B-No more baby images on nipple packs.



C-No more idealising image of mom bottle feeding baby on Comfi Nurser System packs.



D-The *Committed to Breastfeeding* slogan and logo will be removed.
E-Best for Baby will be changed to *Breastfeeding best for baby*.