



# ICDC LEGAL UPDATE

April 2009

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## From ICDC's desk in Penang...

Another issue of ICDC Legal Update as we wrap up a number of projects. Following the publication of *Code Essentials 1: Annotated Code (CE 1)* late last year, ICDC has produced two more slim volumes for this series. *Code Essentials 2: Guidelines for Policy Makers (CE 2)* just rolled out. By the time you receive this issue of Legal Update, *Code Essentials 3: Responsibilities of Health Workers under the Code (CE 3)* will be ready.

UNICEF and WHO in Asia Pacific commissioned these three publications in order to stimulate more action on Code implementation and enforcement in the region.

For years, ICDC has been answering questions on company practices and giving advice on Code matters. The Code Essentials series explain some of the more frequently asked questions about the Code and its interpretation. They will be a useful resource for all working in infant and young child feeding. ICDC hopes that through WHO and UNICEF, these publications will be widely distributed. They can also be ordered directly from ICDC.

Over the past few months, ICDC has also been working on other publications. There is a poster accompanying *Code Essentials 3*, which targets health workers. This poster can also be appropriately tied to our flagship publication, the *Health Worker's Guide*, which is entering its 11th edition. Another perennial publication *State of the Code by Country* (see banner above) is being completely updated in time for the World Health Assembly in May 2009.

ICDC has launched an electronic monitoring report on Code violations in Asia Pacific which is available at [www.ibfan.org](http://www.ibfan.org). Through the efforts of AIS-IBFAN Bolivia, another country-specific monitoring report (in Spanish) has been added to the *Look What They're Doing* series.

Through 2008 and the first quarter of 2009, IBFAN-ICDC conducted training courses in the regions of Middle East-North Africa (April 08), Latin America (July 08) and Central Asia (March 09). Training at the national level was carried out in Vietnam, Cambodia and Papua New Guinea in 2008. A short visit was made to China for Code advocacy purposes in March 2008.

In this issue, we feature articles, highlighted below, which will help you stay informed on Code issues.

**Raja Abdul Razak,  
Publication Support**



## HIGHLIGHTS

- Melamine fiasco in China—the aftermath
- Old wine in new bottles in Cambodia
- Look at this—Adiri profits from breastfeeding
- Nestlé's labelling creates confusion in Laos
- Medela's marketing menace
- Countries with new laws

## Melamine fiasco in China – the aftermath

The worst of the recent melamine catastrophe is nearly over. China's Health Ministry's latest tally revealed that six deaths have been attributed to tainted baby milk powder and that 294,000 infants were hospitalised. (source: China Bystander, 2 Dec. 2008). Melamine, used in the manufacture of plastic dishes, was combined with cyanuric acid and added to milk to mask the fact that the milk had been watered down. This combination makes the milk toxic but gives the impression that the milk is higher in protein and therefore of good quality. The infant formula manufactured from the contaminated milk caused kidney failure in babies.

Although the Chinese government managed to keep a lid on the scandal until after the Olympics, the public outcry caused it to prosecute the parties responsible shortly after. China's top legislature has also approved a food safety law to ensure tighter scrutiny over food production, including a ban on additives unless proven to be both safe and necessary.



Above: Geng Jinping, manager of a milk production base, was sentenced to death.  
Right: Ex Sanlu board chairwoman Tian Wenhua received a life sentence  
(Photos: Ding Lixin/Xinhua/Associated Press)

In the aftermath of this unprecedented tragedy, difficult questions remain:

- ※ Is the public anymore aware of the risks of artificial feeding than before?
- ※ Did the incident serve as a 'wake-up' call for parents to return to the security of breastfeeding?
- ※ Are baby food companies still getting away with practices that violate the Code?

While monitoring reveals that companies keep violating the Code, there are no clear answers to the first two questions at this point.

In a Chinese poll on public perception towards multinational brands, out of 1,000 parents, only 10% said they would not trust the multinational corporations (MNCs) or buy their products, while 53% said there were no changes in their perceptions. A shocking 37% thought MNCs were more trustworthy. They did not see MNCs as being part of the problem. Even though some MNC products had been listed as unsafe due to contamination, these products quickly returned to store shelves after repeated negative tests. (source: China Daily, 19 Jan. 2009)

*Tainted food outbreaks like the deadly melamine discovered in Chinese infant formula will happen again ... because there are so many different ways for a tainted product to enter the food chain and so few inspectors to guard against deliberate or accidental contamination.*  
(AFP news, 18 Feb 2009)

## A missed opportunity for breastfeeding

The fact that artificial feeding by itself is a risk to infant health and that foreign brands are also susceptible to contamination appears not to be of concern to the Chinese public.

There are also no obvious signs that Chinese women are returning to breastfeeding. In the 70s nearly all Chinese mothers breastfed their infants, but rising incomes, development of the dairy industry, commercial promotion and urbanisation have resulted in many women switching to formula feeding.

TNSWorldpanel, a research group, reports that the melamine contamination scandal in China has driven Chinese consumers towards premium and international brands. Although there was an 18% decrease in consumer dairy sales in the four weeks ending October 2008 compared to the previous year, some MNCs experienced unexpected sales surges, boosting their market share in the Chinese dairy market by about 26% and 33% respectively, despite a hike in dairy prices. (source: NUTRA ingredients.com, 13 Nov. 2008)

The appeal of premium international brands could be tied to the fact that MNCs are in the forefront of advertising themselves as a safe and trusted alternative.



Cashing in on the Chinese milk scandal—This huge ad found in an MRT station in Hong Kong claims that Abbott formulas are of "superior quality and safety" and have "gained" the trust of all parents. Gain is a brand name for Abbott's follow-up formula and the product's bear mascot is carrying an award.

Local Chinese companies are just as aggressive, if not more. For example, in their "Milk You Can Trust" promotional campaign, the Chinese company Yili reassures parents: "Yili: consumers, please put your minds at ease". The ad features confidence-building images such as a pregnant woman choosing powdered milk and laboratory technicians clad in white in scenes of Yili's milk production. To top off the reassuring images, captions read "Yili Baby Formula has remained totally untainted, so expectant mothers can purchase it with confidence," and "guaranteed that not one drop of problem milk enters the factory." Another company, Bright Dairy, whose products were identified as containing melamine also engaged in the PR blitz in a local daily stating: "Bright Dairy assures you that its milk is safe." (source: Humes, B., "May the Milk Wars Commence!" www.danwei.org, 27 Sept, 2008).

Legal Update is not aware of any action taken by the Chinese authorities to stop such activities. Now that more food safety regulations are in place, authorities should move to implement its laws and rein in unethical marketing.

## Medela's Marketing Menace

Swiss-based Medela is a company that sells breast pumps. For years they have been treading a fine line where the International Code of Marketing of Breastmilk Substitutes is concerned. Although breast pumps are not covered by the Code, feeding bottles are, and invariably, they are components of breast pumps.

Whether or not breast pumps are a necessary has long been a topic for debate. Breastfeeding, as opposed to breastmilk feeding, is the normal and natural way to deliver nutrition to the baby. It ensures the milk is free from contamination, decreases financial expenses and waste, prevents possible losses of nutrients from the cooling, freezing, thawing and warming of expressed milk, and allows a mother to bond with her baby in a unique manner. However, certain situations do exist where it may be necessary for a mother to give her baby expressed breastmilk, either by hand expression or a mechanical pump. Feeding breastmilk to a sick or very small baby until he or she is able to breastfeed is one such situation.

The promotion of breast pumps has surely increased the number of mothers using the product to express breastmilk even when it is not necessary. In Indiana, USA, breastfeeding women who are part of the WIC (Women, Infants & Children) programme must now request a breast pump, rather than be offered one as a matter of routine. Before being given a pump, mothers are assessed to determine their need and provided with suggestions of alternatives, such as hand expressing, having a caregiver bring the infant to work so the mother can breastfeed, or job sharing.

Perhaps this is the best approach in assuring that mothers breastfeed naturally instead of bottle feeding breastmilk to their babies. Until recently, Medela remained in the grey area where Code compliance is concerned. Now Medela has crossed the line and is promoting feeding bottles and teats as part of their "Complete Feeding System" and "Breastmilk Feeding & Storage Sets". The promotion of these product lines is not only aimed at mothers, but to lactation consultants and their respective associations.

At an Australian Breastfeeding Association conference in 2008, Medela provided booklets about breastfeeding that included advertisements for their feeding bottles. In response



Medela promotes its "complete system for collecting and feeding breastmilk" as 'safe plastic' for the health of mom and baby'. Nothing is said about the importance of putting babies to the breast.

This article was contributed by Heather Beath, a registered dietitian in Canada. She is currently doing an internship with ICDC.

to concerns expressed about violating the Code, Medela said the Code is not clear and since they are promoting these bottles for feeding breastmilk, it should not be a problem for them to market their bottles to the public.

In the US, a Medela ad for its 8 oz. feeding bottle aimed at lactation consultants bears the slogan: "Choose a breastmilk bottle you can trust, from the No. 1 choice of hospitals and mothers". They encourage lactation consultants to promote their products by stating that their *Breastmilk Bottle 6-Pack* is "ideal for display and promotion". Such a move brings the company directly under the purview of the Code and the promotion of the product places many lactation consultants, who hitherto have been working closely with Medela, in a moral dilemma. Do they continue to work with Medela, now that the company has found a way to profit from selling a product that essentially undermines breastfeeding? Those who support the International Code find themselves in a predicament when Medela violates the Code by promoting the so-called 'breastmilk feeding bottles'.

The quandary does not end there. Medela sponsors and provides funding to many lactation associations, bringing conflicts of interest into question. Any financial support received may result in divided loyalties, and so does the establishment of a link of the company name to the organisation which enhances the credibility of the company's product. Fortunately, enough groups have recognised Medela to be a Code violator, and taken positive action to register their protests in various ways.

- The International Lactation Consultants Association will no longer allow Medela to exhibit at the 2009 Annual Conference, nor will their advertisements be accepted in the Journal of Human Lactation.
- La Leche League International has determined that they can no longer accept any sponsorship, donations, advertising, or exhibits from Medela.
- The Centre for Lactation and Breastfeeding Education in Germany has decided not to invite Medela to take a booth at this year's bi-annual conference.
- In the Middle East, lactation consultants have taken action by refusing shipments of Medela pumps that contain teats, and they are making their dissatisfaction known.

With these actions taken, Medela should realise they cannot continue to ignore the aims and principles of the International Code.

### LOOK AT THIS !

#### Another company profiting from breastfeeding !



Can a feeding bottle help mom breastfeed longer? Can a feeding bottle possibly replace mom's breasts? The maker of Adiri feeding bottles claim their BPA-free breast-shaped feeding bottle promotes breastfeeding. Really?

## Nestlé's labelling creates confusion

In late 2008, a 6-month-old infant girl in the Luang Namtha province in Laos was admitted to a hospital suffering from watery diarrhoea, anorexia, fever, and severe malnutrition. Her parents had given her Bear Brand coffee creamer with boiled water for three months. The child died.

### Warnings which made no sense

A survey carried out by an NGO, the *Service Fraternel d'Entraide* project in Laos, revealed that out of 1,098 adults surveyed, 96% believe the Bear Brand coffee creamer contains milk, 46% believe the Bear Brand logo indicates that the product is formulated as a replacement for breastmilk. Over 18% reported giving the product to their infant at a mean age of 4.7 months. The results of the survey were published in the *British Medical Journal* (BMJ). See [http://www.bmj.com/cgi/content/full/337/sep09\\_2/a1379](http://www.bmj.com/cgi/content/full/337/sep09_2/a1379)



Parents mistook this label to represent a baby milk. Can they be blamed for thinking so?

Nestlé, in its response to BMJ claimed that the company has taken "extraordinary labelling measures" to prevent misinterpretation of the Bear Brand label.



The crossed out bottle failed to correct misconceptions about the suitability of the product for babies.

Roland Stieger, Business Executive Manager of Nestlé

Thailand who oversees product distribution in Laos, said "Nestlé has gone further than the requirements of the Code with printed warnings in different languages".

Also included was a pictogram of a crossed-out milk bottle to serve as a warning that the product should not be used as infant food. The survey, however, showed that this warning was far from effective as 80% simply ignored the written message on the can.

Nestlé now states it will, by the second quarter of 2009, make changes to the Bear Brand logo on the label by substituting the cradled baby bear with a glass.

Improper labeling poses a serious risk to consumers who rely on visual cues, to the exclusion of everything else, in determining the type, use and familiarity of a product. As shown in the Laotian experience, a coffee creamer marketed with an illustration of a mother bear holding a baby bear in the breastfeeding position will all too easily mislead people into believing that the product is for infant feeding, with tragic results.

## Old wine in new bottles

ICDC Code monitors stumbled upon cans of baby milks with labels which hid a mischievous secret, to sidestep a labelling requirement in the Cambodian Law. The Cambodian Law covers the marketing of products used for feeding infants and young children up to 24 months old – this means milks for under 24 months cannot be promoted.



Abbott tinkers with age recommendation, from 1 year to 2 years.

So what happens when Abbott imports a brand of milk labelled for use from one year onwards? How do you push a 'rogue' product on the retail market and make it appear 'legitimate'?

Like pouring old wine into new bottles, companies slap on a new label over the old, taking it out of the scope of the law. Change one year into two years – simple!

ICDC Code monitors also encountered bottles of Pierval drinking water made over to look as if they were meant for babies.



A label haphazardly slapped on to create a new use for plain drinking water.

In this instance, the 'new' label created a new use for a product so consumers are deluded into thinking that Pierval water is suitable for use by babies. Promoting water in such a manner undermines the WHO recommendation of exclusive breastfeeding for the first six months of an infant's life.

Manipulating labels for profit in this manner is deceitful and unethical. Such a practice must be stopped. If the companies are not brought to book, it could set a dangerous precedent for other forms of label tampering which could have far-reaching health consequences.

### Countries with new laws

In late 2008, ICDC received welcome information about Code implementation from four countries:

- strengthening of existing law – Lebanon; and
- adoption of new laws – Kyrgyzstan, Maldives and Venezuela.

ICDC gave input on all four laws and congratulates these countries for a job well done.