

NESTLÉ AND THE INTERNATIONAL CODE: WHERE DO THEY DIFFER?

Umpteen ways Nestlé misinterprets the International Code.
An analysis by the International Code Documentation Centre.

Introduction

The aim of the International Code of Marketing of Breastmilk Substitutes is to contribute to safe and adequate nutrition for infants by the protection of breastfeeding. If the International Code were to achieve this aim, commercial baby milks and foods would be sold only to those who really need them.

Obviously companies try to interpret the provisions of the International Code as narrowly as possible. Generally, they do this in the following manner:

- First, exclude many parts of the world from its coverage;
- Second, confine its scope to only a limited range of products; and
- Third, pay no attention to subsequent World Health Assembly (WHA) resolutions which clarify and extend certain provisions of the International Code.¹

Nestlé's interpretation of the International Code is contained in a policy document: **Nestlé Policy and Instructions for Implementation of the WHO International Code of Marketing of Breastmilk Substitutes (published July 2010)**. The principles underlying these guidelines are reflected in the **Nestlé Charter**² which sets out the company's infant formula policy around the world.

The following is an analysis of the many ways in which one of the biggest baby food manufacturers in the world misinterprets the International Code and creates opportunities for continued promotion.

1. Universality of the International Code

Extract from Nestlé Policy and Instructions, Page 2:

The WHO has consistently clarified that it is governments who have the responsibility for defining implementation of the WHO Code within their countries. Thus as a matter of principle Nestlé universally follows all countries' implementation of the WHO Code.

However, because of a heightened need to protect children in countries of the developing world where there is poor sanitation, higher infant mortality and greater public health concerns, Nestlé adheres to the WHO Code as a minimum requirement in these countries. For this purpose, Nestlé has voluntarily issued detailed implementing instructions to align our marketing practices with the WHO Code.

Where such higher-risk³ countries have implemented a local code or other national measures giving effect to the WHO Code, operating companies must follow the national code/measures in addition to the WHO Code and the Nestlé Instructions, whichever is stricter. In case an article of the WHO Code or the Nestlé Instructions is more restrictive than the national code/measures, operating companies must follow the stricter rule laid down in the WHO Code or the Nestlé Instructions, unless otherwise required by the government.

¹ The International Code of Marketing of Breastmilk Substitutes: frequently asked questions, WHO 2008.

² The Nestlé Charter can be downloaded at <http://www.babymilk.nestle.com/who-code-compliance/nestle-policy/Documents/Nestlé%20Charter.pdf> (accessed on 22 July 2011). On 9th April 1999, the Advertising Standards Authority (ASA) discredited an earlier version of the Nestlé Charter. According to the ASA, Nestlé's claim that it was committed to the International Code in developing countries could not be substantiated by its practice.

³ Nestlé's List of Lower-Risk and Higher Risk Countries can be downloaded at <http://www.babymilk.nestle.com/who-code-compliance/nestle-policy/Documents/List%20of%20higher-%20and%20lower-risk%20countries.pdf> (accessed on 22 July 2011)

ICDC: Nestlé makes an unwarranted distinction between “lower-risk” and “higher-risk” countries to guide its marketing conduct. This marketing policy cannot be supported by World Health Assembly resolution 34.22 [1981] which adopted the Code. The text of the 1981 resolution stresses that breastfeeding must be actively promoted in all countries and that adoption and adherence to the International Code is a minimum requirement. The resolution urges Member States to give full and unanimous support to the implementation of the provisions of the International Code in its entirety.

The language of the Code does not justify Nestlé’s decision to divide the world according to health risks either. The Code specifically states that it is the responsibility of all manufacturers and distributors to ensure that their conduct at every level conforms to the Code independent of any other measures taken for its implementation.⁴ This means that even where so-called “lower-risk” countries have national measures which are weaker than the Code, it is the minimum standard set by the Code which Nestlé must follow, not the weaker national measures.

The International Code states that governments should take action to give effect to the principles and aim of the Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures.⁵ This is entirely appropriate as countries operate under different legal systems and law enforcement is a matter under national jurisdictions. The question of enforceability of laws is separate and distinct from corporate social responsibility which Nestlé claims it subscribes to. IBFAN holds companies to a minimum standard in all countries, not just in so-called “higher risk” countries. Even if bottle-fed babies are unlikely to die in industrialised nations, they are more likely to get sick and land in hospital. This can and should be avoided. Infants deserve to be protected the same way in all countries.

In previous Nestlé Instructions, the so-called “higher-risk” countries were simply referred to as “developing”. No such classification was ever made by WHO, UNICEF or the governments which adopted the International Code. To the contrary, the heads of WHO and UNICEF wrote jointly in a letter⁶ to the President of the International Association of Infant Food Manufacturers that -

“Neither WHO nor UNICEF draws any distinction between developed and developing countries with respect to breastfeeding in general or the International Code in particular..... it is the position of WHO and UNICEF that the adoption of and adherence to the International Code of Marketing of Breastmilk Substitutes in its entirety in all countries is a minimum requirement...”

[emphasis added]

The International Code was adopted to protect breastfeeding by regulating inappropriate marketing of breastmilk substitutes. Nestlé was involved in the consultation process of the drafting of the International Code. It endorsed the recommendations from that process. It is hence morally obliged to implement the minimum standards prescribed by the International Code anywhere it has business activities, independent of national measures.⁷

⁴ Code Article 11.3 reads

Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.

⁵ Code Article 11.1 reads

Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures. For this purpose, governments should seek, when necessary, the cooperation of WHO, UNICEF and other agencies of the United Nations system. National policies and measures, including laws and regulations, which are adopted to give effect to the principles and aim of this Code should be publicly stated, and should apply on the same basis to all those involved in the manufacture and marketing of products within the scope of this Code.

⁶ Letter from Dr Hiroshi Nakajima, former Director General of WHO and Mr. James Grant, former Executive Director UNICEF dated 9 July 1991

⁷ See discussion in Part 14 regarding implementation and monitoring of the International Code.

2. Public Policy

Extract from Nestlé Policy and Instructions, Page 4:

Nestlé supports efforts by governments to implement the WHO Code through national legislation, regulation, or other suitable measures that are designed to meet the letter and spirit of the WHO Code's recommendations concerning the marketing of breastmilk substitutes and the promotion of exclusive breastfeeding in the first six months of life and which are clearly communicated to all parties concerned and effectively monitored through impartial procedures.

[emphasis added]

ICDC: Nestlé conveniently omits to state that under WHA Resolution 54.2 [2001], the World Health Assembly also recommends that apart from exclusive breastfeeding for the first six months of life, infants should continue to be breastfed for up to two years or beyond while they receive nutritionally adequate and safe complementary foods. This omission implies that six months is all there is to breastfeeding and comes in handy for Nestlé to promote its complementary foods and follow-up formulas. This omission sets a flawed foundation for Nestlé's entire infant feeding policy.

3. Scope

i. Extract from Nestlé Policy and Instructions, Page 3, under the part on "Implementation of this Policy":

Product Scope (higher-risk countries)

- a) All infant formulas designed to satisfy the nutritional requirements of healthy⁸ infants from birth through 12 months;
- b) follow-up formula products sold to the public for the feeding of healthy infants under the age of twelve months;
- c) bottles and teats, as these may be seen to undermine breastfeeding as defined by the WHO Code. These products are currently not manufactured or marketed by Nestlé.

Products mentioned under description of a) and b) will be collectively referred to as INFANT FORMULAS throughout this document, except where otherwise specified.

Unless specifically required by national legislation, these Policy and Instructions do not apply to:

- a) complementary foods and drinks, including infant cereals, sterilised (or aseptically prepared) meat, vegetable, fruit and/or dairy preparations, juices, teas, broths, etc. for babies, when marketed for use after six months of age provided they do not contain instructions for modification for use as a breastmilk substitute. This is to reinforce Nestlé's commitment to exclusive breastfeeding in the first six months of life;
- b) products that are designed for infants of any age with special medical needs (such as PKU, shortened or abnormal digestive tracts or very premature births). These infants are unable to absorb, digest or metabolise breastmilk or standard infant formula, are under medical supervision and are at risk of death or abnormal development without access to these products.

Product Scope (lower-risk countries)

The product scope in lower-risk countries is determined by each national or regional legislation and norms (e.g. the European Union).

⁸ Healthy infants are defined at page 3 of the Nestlé Policy and Instructions to mean those with no medical needs and who do not require special physician supervision.

ICDC's response to product scope as explained under the part "Implementation of this Policy":

In line with Nestlé's two groupings of countries, the company has two different lists for products it deems to be covered by the International Code. There are no such groupings under Article 2 of the International Code. For the so-called "higher-risk" countries, Nestlé refers to formula products for "healthy infants". While the International Code refers to vulnerability of infants, it makes no distinction between healthy or sick infants.

Nestlé also places a ceiling of one year for products it deems to be covered by the International Code. The International Code does not prescribe any age limit. Instead, a salient feature of the scope provision is the term "breastmilk substitute" which the Code defines in Article 3 as "any food being marketed or otherwise represented as a partial or total replacement for breastmilk, whether or not suitable for that purpose". This basically means that any product that is marketed to replace the breastmilk part of the diet of an infant or young child is a breastmilk substitute and hence is covered by the International Code. Nestlé reduces the scope of the Code to INFANT FORMULAS⁹ only.

Consistent with the global public health recommendation on optimum duration of breastfeeding as contained in WHA Resolution 54.2[2001] (described in Part 2), the following food products come under the scope of the Code:

- *Infant formula or any preparation intended to satisfy the nutritional requirements of infants from birth including special formulas such as soy formula, lactose-free formula, low-birth-weight/premature formula.*
- *Other milk products that are represented as suitable for use as a partial or total replacement for breastmilk: this includes follow-up milks and growing-up milks marketed for babies between six months to two years or beyond. These products always replace the breastmilk part of the baby's diet which is recommended for two years or beyond.*
- *Any other food or beverage that is represented as suitable to be fed to infants less than six months old. This includes commercially processed baby foods and drinks such as cereal, jarred foods, infant tea, juices and water. In short, all products marketed for an age when breastmilk best fulfils the infant's diet.*

Nestlé has stated that complementary foods marketed for babies above six months are not covered by the Code. It must be stressed here that the Code covers products which are "otherwise represented to be suitable ... for use as a partial or total replacement of breastmilk" following the provisions of Article 2¹⁰. Nestlé's complementary food products in so-called "higher-risk countries" are very often represented as suitable for very young infants below six months through promotion and labelling despite a "six months" age indication. By virtue of the misleading representations in promotional materials and on the products themselves, these products become breastmilk substitutes.

Nestlé's policy to follow national or regional legislation to determine the product scope in so-called "lower-risk" countries ignores Code Article 11.3.¹¹ See discussion under Part 1.

⁹ See Nestlé's definition in page 3 of this document.

¹⁰ Article 2 of the Code reads

The Code applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula; other milk products, foods and beverages, including bottle fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breastmilk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.

¹¹ Article 11.3 of the Code reads

Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.

ii. Extract from Nestlé Policy and Instructions, Page 9 under “Scope of the Code”.

Article 2 Scope of the Code

These Instructions apply to the marketing of infant formula covered by Codex (FAO/WHO Foods Standards Programme, Recommended International Standard, Codex Alimentarius Commission, 72-1981) (see Article 10.2). They also apply to follow-up formula products which are marketed for consumption by infants up to 1 year of age.

Note: Throughout these Instructions, all those products are referred to as “INFANT FORMULAS” except where otherwise specified.

WHA Resolution 54.2, as a global public health recommendation, recommends exclusive breastfeeding for six months. Therefore no complementary foods or drinks, including infant cereals and baby foods, should be marketed for use before six months of age unless otherwise mandatorily required by local code or national legislation.

Note: The following Nestlé products are not covered by the Code:

- complementary foods and drinks, including infant cereals, sterilised meat, vegetable, fruit and/or dairy preparations, juices, teas, broths, etc. for babies, as long as they do not contain instructions for modification and use as a breast-milk substitute. These are not to be marketed for use before 6 months of age unless otherwise mandatorily required by local code or national legislation;
- sweetened condensed milk, evaporated milk, skimmed milk, UHT milk, full cream powdered milk, growing up milks. All such milk products shall not contain instructions for modification for use as a breast-milk substitute and shall bear a statement indicating that they are not suitable for use as a breast-milk substitute.

ICDC’s response to product scope as explained under “Scope of the Code” at Page 9 of the Nestlé Instructions.

Instead of quoting from Article 2 which defines the scope¹² of the International Code, Nestlé draws the scope from Art.10 and Codex 72-1981 on Infant Formula.

This is wrong for 2 reasons:

- 1) Article. 10¹³ pertains only to quality of food for infants. Article. 10 does not determine the scope of the International Code which is defined in Article 2.*
- 2) The Codex Standards referred to in Article 10 are not confined to infant formula alone but to all food products within the scope of the International Code. For example, there is the Codex Standard for Canned Baby Foods [73-1981], Codex Standard for Cereal-based Foods [74-1981] and Codex Standard for Follow-up Formula [156-87]. Complementary foods which are marketed or otherwise represented as suitable for babies below 6 months are de facto breastmilk substitutes.¹⁴*

¹² Article 2 of the Code reads:

The Code applies to the marketing, and practices related thereto, of the following products: breastmilk substitutes, including infant formula; other milk products, foods and beverages, including bottle fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breastmilk; feeding bottles and teats. It also applies to their quality and availability, and to information concerning their use.

¹³ Article 10 of the Code reads:

10.1 The quality of products is an essential element for the protection of the health of infants and therefore should be of a high recognized standard.

10.2 Food products within the scope of this Code should, when sold or otherwise distributed, meet applicable standards recommended by the Codex Alimentarius Commission and also the Codex Code of Hygienic Practice for Foods for Infants and Children.

¹⁴ World Health Assembly Resolution 39.28 [1986] draws attention to the fact that any food or drink given before complementary feeding is nutritionally required may interfere with the initiation or maintenance of breastfeeding. A later resolution, WHA resolution 49.15 [1996] urges Member States to ensure that complementary foods are not marketed for or used in ways that undermine exclusive and sustained breastfeeding. In April 2003, Nestlé announced that it had “completed label changes on complementary foods to follow the six-month recommendation in developing countries”. In developed countries, Nestlé does not consider complementary foods to be breastmilk substitutes. This dichotomy in interpretation is defensible only from the business angle, certainly not from plain reading of the International Code and subsequent WHA resolutions.

Why does Nestlé refer only to Codex Standard 72-1981 on Infant Formula? The reason is obvious - by confining the scope to INFANT FORMULAS, a wide range of products drops out of the purview of the International Code. The wording of Article 2, however, covers all substitutes which replace breastmilk totally or partially. WHA Resolution 54.2 [2001]¹⁵ sets the period of exclusive breastfeeding at 6 months and recommends that breastfeeding be continued for up to two years or beyond. Any product which replaces breastmilk either totally or partially during the “two years or beyond” period is a breastmilk substitute.

The term “breastmilk substitutes” is defined in Article 3 of the International Code as covering “any food being marketed or otherwise represented as a partial or total replacement for breastmilk, whether or not suitable for that purpose”. (See Listing at Page 4.)

ICDC is not alone in pointing out Nestlé’s misinterpretation of the scope of the International Code; Former Executive Director of UNICEF, Carol Bellamy, identified “scope” as one of the major differences between Nestlé, UNICEF and the World Health Organization:

“Nestlé’s limitation of the scope of the Code to infant formula is another matter of contention. The plain wording of Article 2 of the Code shows clearly that the term ‘breastmilk substitutes’ can include ‘other milk products, food and beverages’ depending on how they are marketed. This language, adopted by the Members of the World Health Assembly, overrides any contrary implications ...”¹⁶

iii. Extract from Nestlé Policy and Instructions, Page 9 (right hand column) under the note “The scope as clarified in Annex 3 of the Code ”:

Note: The scope is clarified in Annex 3 (p. 33) of the Code:

During the first four to six months of life, breastmilk alone is usually adequate to sustain the normal infant’s nutritional requirements. Breastmilk may be replaced (substituted for) during this period by bona fide breastmilk substitutes, including infant formula. Any other food, such as cow’s milk, fruit juices, cereals, vegetables, or any other fluid, solid or semisolid food intended for infants and given after this initial period, can no longer be considered as a replacement for breastmilk (or as its bona fide substitute).

ICDC’s response to product scope as explained under the note “the scope as clarified in Annex 3” at Page 9 (right hand column) of the Nestlé Instructions:

The extract from Annex 3 of the Code as reproduced on page 9 of Nestlé’s Policy and Instructions is selectively quoted from the introductory speech made on 20 May 1981 by Dr. T. Mork, the Representative of the Executive Board to the 34th World Health Assembly. Nestlé uses this quote to wrongly limit the scope of the Code to its advantage. This statement does not override any of the provisions of the International Code. Also, the following statement in Annex 3 is deliberately overlooked:

“Products other than bona fide breastmilk substitutes including infant formula are covered by the Code only when they are “marketed or otherwise represented to be suitable ... for use as a partial or total replacement of breastmilk.”

¹⁵ 54.2 [2001] recommends that infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health. Thereafter, to meet their evolving nutritional requirements, infants should receive nutritionally adequate and safe complementary foods while breastfeeding continues for up to two years of age or beyond.

¹⁶ Letter dated 3 November 1997 from UNICEF to Mr Peter Brabeck, then Executive Vice President, Nestlé SA.

The text above shows that the stand taken by Nestlé is incorrect and whether or not a product is covered by the International Code depends on how it is marketed or represented.

Apart from the main breastmilk substitutes like infant formula, follow-up formula and any other milks fed to infants during the period of two years or beyond, breastmilk substitutes include also any foods marketed or otherwise represented as suitable for feeding an infant up to the age of six months.

Commercially, there is a wide range of solid foods such as cereals, jarred foods and drinks (including water) that are marketed or represented as suitable for babies below six months. That period is reserved for exclusive breastfeeding. These products are automatically substitutes for breastmilk.

4. Information and Education

Extract from Nestlé Instructions, Pages 10 and 11:

Art. 4.2 All infant feeding information intended for mothers, whether of a general educational nature or dealing with the explanation and instructions for the use of INFANT FORMULAS, must contain a statement regarding each of the points (a) to (e) contained in this article of the WHO Code. Specific points from Art. 4.2 will be dealt with in much greater detail in certain educational materials such as mother books and educational posters (see also Art. 4.3).

Only information intended for mothers that deals with the explanation and instructions for use of a specific INFANT FORMULA may bear corporate and product brands. In order to avoid confusion with other formula products or milk products inappropriate for use as breastmilk substitutes, they may include the packshot of the specific INFANT FORMULA.

These materials are intended for use by health workers in instructing mothers who have to use breastmilk substitutes and may not be given to mothers by company personnel. They are intended to complement information contained on the label, especially when catering to the needs of minority language groups or the needs of semi-literate or illiterate mothers. Such materials must include the information specified in this Article of the WHO Code.

Baby pictures may only be used to enhance the educational value of information and must not idealise INFANT FORMULA feeding. The same restraint should generally be observed for pictures or texts used in those informational and educational materials. In case of doubt, the Nestlé Nutrition Business and Public Affairs must be consulted (see also note under Art. 5.1).

Art. 4.3. Materials intended for pregnant women and mothers that are of a general nature related to maternal and child health, such as educational posters, educational charts, mother books, breastfeeding booklets, weight/growth charts, vaccination and health cards, height measurement charts, films or slide presentations, videocassettes, CD-ROMs, etc., must not contain illustrations of INFANT FORMULA or mention the names of individual INFANT FORMULA brands. Corporate name or logo may be used. If these materials have been edited by the company in collaboration with the health authorities or the medical profession, this may be mentioned. Such materials should be made available to health care institutions and professionals only upon their request and in accordance with any applicable government requirements or guidelines.

Note: Materials covered under Art. 4.2 and 4.3 may only be given or shown to mothers by health professionals, and when dealing with infant feeding must include the information required by Art. 4.2 of the WHO Code. A note on such material shall clearly indicate that the material may be given or shown to mothers by health professionals only. Mother books may include generic information on INFANT FORMULA of an educational nature which explains when the use of an INFANT FORMULA may be necessary and the precautions for correct use.

ICDC: Article 4 provides that the dissemination of objective and consistent information is the responsibility of governments. Companies may only provide information and educational equipment and materials at the request and with the written approval of governments and then only if they comply with special requirements. The need for written approval is omitted from the Nestlé Instructions.

Nestlé makes a distinction between materials covered by Articles 4.2 and 4.3 and the types of corporate endorsements which may appear on them. There is no basis for such a distinction. All sub-articles of Article 4 must be read in conjunction.¹⁷ All materials governed by Article 4.2 may not bear product brands and packshots because such images violate Article 4.3. Nor should there be baby pictures to enhance the educational value of information as Nestlé allows since baby pictures invariably idealise the products described in materials.

Nestlé represents that materials under Article 4.2 are intended for use by health workers in instructing mothers who have to use breastmilk substitutes. There is no such provision in Article 4.2. Nestlé wrongly imports the provisions of Article 6.5¹⁸ into its interpretation of Article 4.2 to justify the distribution of information which are not scientific and factual to health workers. When these materials are provided in bulk to health care facilities, they are invariably distributed to mothers.¹⁹

For example, Nestlé's vested interest can be clearly seen in the way the company distributes tear-off information leaflets to health facilities which show in full colour the entire range of Nestlé formula products alongside feeding tables and preparation instructions. There is even a space for doctors to tick a particular brand and to stamp their seal. Individual sheets are then handed over to mothers conferring valuable medical endorsement on the product.²⁰

Nestlé claims its materials cater to the needs of minority language groups, semi-literate groups or illiterate mothers. These groups are the least likely to understand abstract messages in graphics and the most likely to be influenced by glossy materials which create brand awareness and idealise bottle feeding.

Clearly, Nestlé-produced materials are promotional in nature and targeted ultimately at mothers. Since promotion to the general public and mothers is prohibited under Article 5.1, Nestlé cannot use Article 4 as a back door for access to the general public.²¹

¹⁷ Article 4 of the Code reads:

4.1 Governments should have the responsibility to ensure that objective and consistent information is provided on infant and young child feeding for use by families and those involved in the field of infant and young child nutrition. This responsibility should cover either the planning, provision, design and dissemination of information, or their control.

4.2 Informational and educational materials, whether written, audio, or visual, dealing with the feeding of infants and intended to reach 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, whether manufactured industrially or home-prepared. When such materials contain information about the use of infant formula, they should include the social and financial implications of its use; the health hazards of inappropriate foods or feeding methods; and, in particular, the health hazards of unnecessary or improper use of infant formula and other breastmilk substitutes. Such materials should not use any pictures or text which may idealize the use of breastmilk substitutes.

4.3 Donations of informational or educational equipment or materials by manufacturers or distributors should be made only at the request and with the written approval of the appropriate government authority or within guidelines given by governments for this purpose. Such equipment or materials may bear the donating company's name or logo, but should not refer to a proprietary product that is within the scope of this Code, and should be distributed only through the health care system.

¹⁸ Article 6.5 of the Code reads:

Feeding with infant formula, whether manufactured or home-prepared, should be demonstrated only by health workers or other community workers if necessary; and only to the mothers or family members who need to use it; and the information given should include a clear explanation of the hazards of improper use.

¹⁹ See also discussion on health workers in Part 9 below.

²⁰ Towing the company line, Nestlé spokesman Robin Tickle denied that tear-off pads equate to promotion. Tickle claimed instead that the device is "essentially a safety measure" and allowed under the Code as information to healthcare workers for subsequent distribution to mothers. Tickle did not accept that the Code does not distinguish between tear-off pads and other sorts of promotion, or that any piece of paper that features a picture of a product a company wants to sell is de facto advertising. Tickle made this statement for the article "Milking it" by Joanna Moorhead, reported in The Guardian UK, May 15 2007. In Nestlé's Investigation of Reported Non-Compliance with the Who International Code Of Marketing of Breastmilk Substitutes (<http://www.babymilk.nestle.com/who-code-compliance/allegation-and-nestle-responses/Documents/Nestl%C3%A9%20Response%20to%20IBFAN%20Report%202010.pdf> - accessed on 1 August 2011)), Nestlé went so far as to say that the pack shots are to help mothers find the right product or pack on shelves and that materials given to paediatricians to use judiciously do not violate the Code.

²¹ See also discussion on the general public and mothers in Part 5 below.

Health workers have no need to give instruction leaflets which carry brand names and packshots to parents because explanations and instructions for use are clearly printed on labels or on under the lid inserts, both of which are governed by specific provisions under the Code. When company materials are presented by health workers to mothers, they are perceived as product endorsements. This is a cost effective way of promoting particular brands of breastmilk substitutes as health workers are in a key position to influence decisions on infant and young child feeding.

Article 4 in its entirety should also be read in the light of WHA resolution 58.32 [2005]²² which warns against conflicts of interest. Nestlé-produced materials undermine breastfeeding through promotional tactics such as the display of product names, logos, claims and other idealising text and images. Such materials should not be approved by health authorities.

5. The general public and mothers

Extract from Nestlé Instructions, Page 12 and 13:

Art. 5.1 INFANT FORMULAS must not be advertised or promoted directly to mothers or the general public either through public media or by personal contact between company representatives and the public. This restriction also applies to Nestlé websites. The restriction under Art. 5.1, as applied to products specified under Art. 2, includes a ban on:

- participation in/sponsorship of baby shows (even when invited to participate by health workers or charitable institutions);
- distribution of gift packs for mothers;
- distribution to mothers of materials of a non educational nature (whether product-related or not): birth certificates, calendars, baby albums, etc.

General information on infant feeding and baby care, which includes information on the proper use of INFANT FORMULA (such as mother books and posters) may only be distributed to mothers by health workers or displayed by them in health care facilities subject to the provisions of Art. 4.2, 4.3, 6.2 and 7.2. Such information may not feature INFANT FORMULA brands and may not be used as advertising or promotion aimed at the general public.

Note: Educational materials intended for use in instructing mothers must be consistent with these Instructions.

....

Art 5.5 Company personnel involved in the marketing of infant and baby foods, including those whose responsibilities include the provision of information to the health profession about those products may not solicit direct contact with pregnant women or mothers of infants below six months of age, either individually or in groups, through whatever medium. This restriction applies even to contacts for the purpose of providing information or samples of products not covered by the Code, such as food supplements for expectant and nursing mothers, if such contacts aim at indirectly promoting products covered by the Code. This does not prevent appropriately qualified personnel from responding to complaints or unsolicited requests for information on correct use of INFANT FORMULAS. Requests for information on health matters or general information on INFANT FORMULAS must be referred to a health worker (see also Art. 6.4 and 8.2)

[emphasis added]

ICDC: Very often, promotion happens under the guise of information. Nestlé's Instructions on Article 5.1 prohibit the distribution of non-educational materials but allow for general information on infant feeding and baby care which often displays corporate and product names and logos alongside idealising baby pictures.

²² WHA resolution 58.32[2005] calls on Member States to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflicts of interest.

This interpretation negates the very foundation of the International Code which hinges on a ban on promotion as provided for under Article 5.²³ It should be reiterated that the scope of the International Code covers all breastmilk substitutes, not just infant formula.²⁴

“INFANT FORMULAS” are defined by Nestlé to mean formulas for infants from birth through to 12 months. By imposing the one year age limit, Nestlé allows itself to freely promote follow-up formulas and growing-up milks marketed for children one year and older. Apart from the fact that the age bar is totally unwarranted, there is a distinct shifting of goal posts set in previous Instructions²⁵ which bar promotion of follow-up formulas with the same brand/label design. For example, follow-up formula NAN 2 and NAN 3 which share the same brand name as NAN 1 were for many years not allowed to be promoted. There is no resolution to warrant such the shift in Nestlé’s policy. To the contrary, WHA 63.23 [2010] contains a call to end inappropriate promotion of food for infants and young children. This would cover products such as NAN 2 and NAN 3 even when they are targeted at young children²⁶ above 12 months of age.

Although Article 5.5 of the Code refers to “direct or indirect contact of any kind”, Nestlé only restricts “direct contact”.

In addition, Nestlé mischievously introduces the “six months exclusive breastfeeding” recommendation into this sub-article. Article 5.5 prohibits contact with mothers of infants and young children, covering an age range of 36 months. There is no basis for substituting the three year age range with “six months”. One can only surmise that Nestlé is motivated by commercial interest in its interpretation of Article 5.5.

6. Health care systems

Extract from Nestlé Instructions, page 14:

Art 6.2. ...The distribution to health care facilities of educational materials bearing corporate identification, subject to the requirements of Article 4, is permitted. Scientific or technical product information, and instructions intended to assist health workers in guiding mothers on the correct use of specific formula may only be distributed to health workers (see Art. 7.2).

ICDC: Article 4 .3 says that educational materials may only be distributed at the request of and with the written approval of the appropriate government authority. Nestlé conveniently omits this requirement.

Materials associated with babies, new mothers or infant feeding can be a form of promotion even if they refer only to the name of the manufacturer or distributor of breastmilk substitutes. Such materials should never be placed in facilities of the health care systems where they might be seen by pregnant women or new mothers. Article 6.2 prohibits any facility of a health care system to be

²³ Article 5 of the Code reads:

- 5.1 There should be no advertising or other form of promotion to the general public of products within the scope of this Code.
- 5.2 Manufacturers and distributors should not provide, directly or indirectly, to pregnant women, mothers or members of their families, samples of products within the scope of this Code.
- 5.3 In conformity with paragraphs 1 and 2 of this Article, there should be no point-of-sale advertising, giving of samples, or any other promotion 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, for products within the scope of this Code. This provision should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.
- 5.4 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.
- 5.5 Marketing personnel, in their business capacity, should not seek direct or indirect contact of any kind with pregnant women or with mothers of infants and young children.

²⁴ See also discussion on information and education in Part 4 above.

²⁵ Nestlé Instructions for Implementation of the WHO International Code of Marketing of Breastmilk Substitutes, July 2004 at page 5.

²⁶ The term, “young child” is internationally accepted to mean a child between the age of 1 to 3 years.

used for the purpose of promoting infant formula or other products within the scope of the International Code. Article 6.3 goes further to prohibit the display of company products, placards, posters and materials in facilities of the health care system.

The dissemination of information to health professionals allowed under Article 7.2 is aimed solely at health professionals. Such information must be restricted to scientific and factual matters. It is not meant for health workers to guide mothers on correct usage as such information is found on product labels.

7. Supplies

Extract from Nestlé Instructions, page 15:

6.6 INFANT FORMULAS may not be donated to health care facilities for any reason, nor may they be sold to health care facilities at a price which is merely token in nature (thus amounting to a de facto donation). Sales to health care facilities or systems may be made under normal procurement procedures for hospital supplies, at the best wholesale price. Where national ruling allow, the Company may respond to written requests from orphanages or other social welfare institutions for free or low-price supplies of INFANT FORMULAS for feeding infants who have to be fed with breastmilk substitutes, to serve social or humanitarian purposes.....

[emphasis added]

ICDC: Article 6.6 specifically refers to “supplies of infant formulas or other products within the scope of this Code”. By confining its instructions to just INFANT FORMULAS, Nestlé deliberately leaves the door open for donation of complementary foods such as cereal products. Monitoring worldwide reveals that Nestlé is aggressively marketing complementary foods through the use of the Blue Bear product mascot and other materials in healthcare facilities. In industrialised countries, these products are labelled as suitable from four months while in developing countries promotional materials of complementary foods are often targeted at babies younger than six months even though labels have changed to six months. These products effectively become breastmilk substitutes when they are marketed or represented as suitable for babies below six months.

By limiting the scope to INFANT FORMULAS and defining them as formulas for healthy infants from birth through to 12 months, Nestlé is free to distribute special formulas, follow-up formulas and growing-up milks marketed for children one year and older.

Article 6.6 must be read together with WHA Resolution 47.5 [1994] which recommends a ban on donations of free or subsidised supplies of breastmilk substitutes and other products covered by the International Code in any part of the health care system. The Nestlé Policy and Instructions including Annex 2 thereof make no reference to this important resolution or previous ones which concern the issue of ceasing supplies.

8. Equipment and materials

Extract from Nestlé Instructions, page 16:

Art 6.8....Equipment such as incubators and audio visual equipment (hardware and software other than CD-ROM containing educational/instruction material on nutrition and health care) can only be given to institutions. Such equipment as well as low-cost service items, like diaries and gestation calendars, for the use of health workers may bear the Company name and logo, but no product name or logo. Equipment exceeding a value of US\$ 50 may only be provided against a written request from the head of the department or institution concerned or in accordance with national regulations, with the approval of a member of the management committee of the local Nestlé company.

Service items given to the medical profession but used publicly in the health institutions including:

- wrist bands
- hospital health cards
- arm/head measuring tapes
- tongue spatulas
- bibs
- plates/cups
- alcohol swabs, etc.

may not bear any INFANT FORMULA brand but may bear the Corporate logo....

ICDC: The intent of Article 6.8²⁷ when adopted was to enable only the health care systems of poor countries to accept medical equipment and materials.²⁸ Nestlé sets procedures and identifies the types of service items that the company may provide without any enquiry or consideration given to need or affordability. In fact, the “low-cost service items” which Nestlé allows to be provided to health workers are a form of material inducement prohibited under Article 7.3²⁹. These should never be allowed because research has shown that gifts of even minimal value carry influence.³⁰

Additionally, public display of such items in hospitals or clinics confers medical endorsements on companies and their products. Such implicit endorsements are very valuable in marketing. Corporate names and logos in any part of the health care system will promote the company name and thereby its products. Imagine a ward full of babies with Nestlé bibs or Nestlé wrist bands and imagine doctors carrying Nestlé pens and diaries! This is the kind of promotion that the International Code seeks to eradicate. Bearing in mind the spirit and aim of the International Code, items which promote the company name and by association its products should not be allowed

If donations of equipment and materials which bear a company’s name or logo must be made, care should be taken to ensure that there are no public displays of these materials in line with Art. 6.3³¹.

9. Health Workers

Extract from Nestlé Instructions, Page 17:

7.1 Health workers’ responsibility. Nestlé will cooperate in these efforts by providing upon request, and whenever possible, copies of the official WHO Code and culturally appropriate educational materials (videos, brochures, posters) promoting breastfeeding.

7.2 In their contacts with health workers, Company personnel have the responsibility to emphasise the superiority of breastfeeding, the WHO Code and to give objective information on scientific and factual matters pertaining to formula and its correct use.

²⁷ Article 6.8 of the International Code reads:

Equipment and materials, in addition to those referred to in Article 4.3, donated to a health care system may bear a company’s name or logo, but should not refer to any proprietary product within the scope of this Code.

²⁸ Shubber, S., “The International Code of Marketing Breastmilk Substitute – An International Measure to protect and promote breastfeeding.” Kluwer Law International, 1998, page 145.

²⁹ Article 7.3 of the International Code reads:

No financial or material inducements to promote products within the scope of this Code should be offered by manufacturers or distributors to health workers or members of their families, nor should these be accepted by health workers or members of their families.

See also discussion on financial and other forms of inducement to health workers in Part 9 below.

³⁰ Brennan T.A. et al, “Health industry practices that create conflicts of interest”, Journal of American Medical Association, 295:429-433, 2006.

³¹ Article 6.3 of the International Code reads:

Facilities of health care systems should not be used for the display of products within the scope of this Code, for placards or posters concerning such products, or for the distribution of material provided by a manufacturer or distributor other than that specified in Article 4.3.

Information on formula intended for health professionals should avoid promotional language and content, whether textual or pictorial, aiming at idealising formula feeding over breastfeeding. These informational materials may include pictures of the product and bear corporate and product brands in order to facilitate identification of the product.

They must mention the information specified in Art 4.2 of the Code. Detailed and illustrated preparation instructions, using vernacular languages, may be given to health workers to assist them in instructing mothers who have to use breastmilk substitutes. All such informational materials should conspicuously mention that they are destined for health workers only and bear a date and a print code for traceability purposes.

7.3 No financial or material inducements to promote INFANT FORMULA may be offered to health workers or members of their families. Low-cost items of professional utility (see Annex 4), or token gifts may be given to health workers on an occasional basis if and as culturally appropriate. No such donations should be used as a sales inducement. Those items may bear the Corporate logo.

ICDC: Nothing in Article 7.1 of the International Code requires companies to help promote breastfeeding. Indeed, companies manufacturing or distributing breastmilk substitutes must NOT promote breastfeeding as there is a clear conflict of interest. For every child that is breastfed, there is one child less fed on breastmilk substitutes so underlying the breastfeeding messages, Nestlé instils familiarity with the company name and by association the desire for its products. If Nestlé is genuine in “cooperating” in the promotion of breastfeeding, it should be asked to remove all references to its company or product name and logo.

Under the Global Strategy for Infant and Young Child Feeding (adopted by WHA resolution 55.25 [2002]) the role of baby food companies is confined to ensuring quality of their products and compliance with the International Code and subsequent resolutions, as well as to national measures implementing these.³²

Article 7.2 allows product information to health professionals only, not the wider class of health workers. Article 6.5³³ requires health workers to demonstrate the use of infant formula to mothers who need to use the product. Nestlé misinterprets Article 6.5 as allowing company personnel to provide educational/instruction materials to assist health workers in guiding mothers. This is not justifiable as health workers can obtain preparation instructions from product labels and there should be no necessity to rely on company materials. Pursuant to WHA resolution 58.32 [2005]³⁴, WHO, has in collaboration with FAO, issued several guidelines in 2007 on safe preparation, storage and handling of powdered infant formula in health care settings and in the home environment. Companies have a responsibility to place warnings on labels regarding the risks of intrinsic contamination of powdered infant formulas. Other than that, there is no requirement for them to provide health workers with additional materials to assist them in instructing mothers who have to use breastmilk substitutes.³⁵

Inducements referred to under Article 7.3 can take many forms. Value is not always a prime consideration. Studies have shown that even small gifts can affect clinical judgement and heighten the perception as well as the reality of a conflict of interest.³⁶ Gifts, regardless of value, create brand awareness and corporate goodwill. They act as inducements for health workers to recommend the company’s products. Nestlé did not define culturally appropriate gifts.

³² Paragraph 44 – it is the only paragraph which deals with the role of commercial enterprises.

³³ Article 6.5 of the International Code reads:

Feeding with infant formula, whether manufactured or home-prepared, should be demonstrated only by health workers, or other community workers if necessary; and only to the mothers or family members who need to use it; and the information given should include a clear explanation of the hazards of improper use.

³⁴ WHA 58.32 highlights the public health risks of intrinsic contamination of powdered infant formula, the need for health workers, parents and care givers to be informed and for guidelines to be developed for safe handling and usage of infant formula.

³⁵ See also discussion on information and education under Part 4 above.

³⁶ Source: www.nofreelunch.org> ACP-ASIM Position Paper: Ann Int Med 2002;136:000

The ambiguity surrounding the term has its advantage. It gives a lot of room for manoeuvre and license for abuse thus giving rise to “conflicts of interest” which WHA resolution 58.32 [2005] ³⁷ seeks to avoid.

10. Samples

Extract from Nestlé Instructions, Pages 17-18

7.4 Samples of INFANT FORMULAS may be provided to individual health workers for the purpose of professional evaluation in the following instances:

- to introduce a new INFANT FORMULA product;
- to introduce a new formulation of an existing product;
- to introduce our INFANT FORMULA range to a newly qualified health professional.

In these cases, one or two cans of formula may be given to health worker for this purpose and one time only.....

INFANT FORMULAS may also be provided for research or clinical validation, subject to completion of a research protocol (see Annex 5.2, Nestlé’s Clinical Validation Protocol). In such cases, the INFANT FORMULAS must bear a sticker: “Formula provided for Clinical Validation – NOT FOR RESALE”.

[emphasis added]

ICDC: There is only one exception to the ban on samples under Article 7.4: professional evaluation or research at the institutional level.³⁸ This exception must also be read in the light of WHA resolution 58.32[2005] which warns about conflicts of interest arising from “incentives” for programmes and health professionals.

If, as a matter of routine, health workers receive one or two cans of infant formula whenever there is a new infant formula or a new formulation, then clearly the samples are purely for the purpose of promotion. When formula samples are given to newly qualified health professionals, the samples facilitate contact with doctors and promote goodwill for the brand and company.

Where research is concerned, it is significant that the phrase “at the institutional level” has been omitted from the Nestlé Policy and Instructions [July 2010 version]. Research at the institutional level requires approval from various medical and ethical committees which could be an impediment against the distribution of samples.

Nestlé has interpreted “research” to include also “clinical validation” of products. Nestlé’s Clinical Validation Policy as contained in Annex 5 of the Policy and Instructions indicates that samples are allowable to monitor product performance, comprehension of and conformity with preparation instructions, particularly among users in the lower socio-economic groups. Such clinical validation is for commercial product development not research in furtherance of health. If not properly scrutinised and supervised, the samples offered under the clinical validation process could entice parents, especially those from the lower income groups, to forsake breastfeeding for the promise of free products over an extended period of time. The fact that mothers are required to sign a consent form in Annex 5.1 to indicate that she is aware of the superiority of breastfeeding serves more to protect Nestlé’s reputation than infant health.

³⁷ WHA resolution 58.32 [2005] urges Member States to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflicts of interest.

³⁸ Article 7.4 of the International Code reads:

Samples of infant formula or other products within the scope of this Code, or of equipment or utensils for their preparation or use, should not be provided to health workers except when necessary for the purpose of professional evaluation or research at the institutional level. Health workers should not give samples of infant formula to pregnant women, mothers of infants and young children, or members of their families.

This Article must also be read in the light of WHA Resolution 58.32[2005] (see foot note 37).

11. Sponsorship

Extract from Nestlé Instructions, Page 18:

7.5 The decision to support scientific activities such as congresses, scholarships, study tours, etc. must be taken on a case-by-case basis by a member of the management committee of the local Nestlé company.... Financial or other support does not imply endorsement by the recipients of Nestlé policies or activities and shall be provided in a transparent manner. Preference will be given to support for nominees of associations or institutions....

ICDC: A weakness in the International Code allows contributions to health workers for fellowship, research and the like, but requires manufacturers and distributors to disclose any such contributions to the relevant institution.³⁹ Sponsorship is a hard-nosed business decision undertaken with positive ends in mind and with the intention of obtaining a proportionate return to the sponsor for the money invested.⁴⁰ Even if Nestlé's Policy and Instructions claim that financial or other support does not "imply endorsement" it goes a long way towards providing goodwill and wielding influence over the beneficiaries of their largesse. Why else would the company spend considerable sums on sponsorship if it is not with the intention of obtaining a return for the money invested? Those who are tempted to accept commercial sponsorship should pay heed to WHA Resolution 49.15 [1996] which urges Member States to ensure that the financial support for professionals working in infant and young child health does not "create conflicts of interest". The need to avoid conflicts of interest is reiterated in WHA 58.32 [2005] and extended to programmes in Infant and young child health. There is a growing call for disclosure and transparency both in scientific journals and at meetings.

12. Persons employed by Manufacturers and Distributors

Extract from Nestlé Instructions, Page 19

Art. 8.2 Company personnel, e.g. medical delegates whose responsibilities include the provision of information about infant and baby foods to the health profession may not perform educational functions in relation to pregnant women or mothers of infants and young children if such contacts aim at indirectly promoting products covered by the Code.

However such personnel may provide information on weaning practices and complementary feeding to mothers of infants beyond six months of age, subject to their emphasising that breastfeeding should continue for as long as possible after introduction of complementary feeding (see also Art. 6.4)

ICDC: This latest version of the Nestlé Policy and Instructions adds a qualifier to a straightforward prohibition (see underlined text in above extract). Article 8.2⁴¹ specifically prohibits marketing personnel from performing educational functions in relation to pregnant women or mothers of infants and young children.

It is inconceivable how Nestlé can interpret Article 8.2 as allowing its marketing personnel to provide information on weaning practices and complementary feeding when one of the target groups mentioned is "mothers of infants and young children".

³⁹ Article 7.5 of the International Code reads :

Manufacturers and distributors of products within the scope of this Code should disclose to the institution to which a recipient health worker is affiliated any contribution made to him or on his behalf for fellowships, study tours, research grants, attendance at professional conferences, or the like. Similar disclosures should be made by the recipient.

⁴⁰ Sedgwick, A.R.M., "Sponsorship--the 4th arm of marketing", in Denig, E. and van der Meiden, A., (eds.), *A Geography of Public Relations Trends*, Selected Proceedings of the 10th Public Relations World Congress "Between People and Power", Amsterdam, 3-7 June 1985, Martinus Nijhoff Publishers, Dordrecht, 1985, p.397.

⁴¹ Article 8.2 of the Code reads –

Personnel employed in marketing products within the scope of this Code should not, as part of their job responsibilities, perform educational functions in relation to pregnant women or mothers of infants and young children. This should not be understood as preventing such personnel from being used for other functions by the health care system at the request and with the written approval of the appropriate authority of the government concerned.

Nestlé also omits any mention of Article 5.5 which prohibits marketing personnel (also company personnel) from seeking direct or indirect contact of any kind with pregnant women or with mothers with infants and young children. It is difficult to imagine how information can be provided on weaning practices and complementary feeding without “contact”. It is pertinent to note that Nestlé’s interpretation of Article 5.5 narrows the age range for prohibition of contact from three year⁴² to mothers with infants below 6 months of age.⁴³

Reliance placed by Nestlé on Article 6.4⁴⁴ is incomprehensible as mother craft services would cover advice and assistance rendered to mothers in infant feeding and this is prohibited. Whether or not company personnel emphasise breastfeeding is irrelevant.

13. Labelling

Extract from Nestlé Policy and Instructions, Page 20:

Art 9.1 Individual country requirements, if any, must be respected in addition to the requirements under this WHO Code Article which are recognised as the minimum requirement. Please refer to labelling guidelines respectively issued by Nestlé Nutrition Business and by the Dairy Strategic Business Unit, Vevey.

Art 9.3 In the absence of specific national requirements, labels of Nestlé milk products not adapted for infant feeding must bear a warning to that effect. Labels of milk powders (including growing-up milks), ready-to-drink milks, evaporated milk, condensed milk (sweetened and unsweetened) and creamers, must mention that the product should not be used for feeding babies below 12 months of age because it is not a breastmilk substitute. In any case, the Dairy Strategic Business Unit’s detailed labelling instructions must be followed.

ICDC : Article 9.1⁴⁵ of the Code requires that labels do not discourage breastfeeding. Nestlé’s guidelines as evident from its product labelling allow for promotional devices to be displayed which idealise its products and discourage breastfeeding. The stylised logo of a family of well nourished birds on formula products portrays a healthy nesting image. The Blue Bear character found on complementary food labels is configured to resemble an infant or young child at different stages of development. It is an enticing mascot used widely in promotional materials to induce sales.

The “Protect” logo that appears on both formula and complementary products contains claims⁴⁶ which are promotional and dishonest. In some countries, labels portray a mother bear cradling a baby bear in a breastfeeding position. Even though the product is unsuitable for infants, like a coffee creamer, the image on the label represents it as a breastmilk substitute.⁴⁷

⁴² The upper age limit for “young children” is accepted internationally as 36 months.

⁴³ See also discussion on general public and mothers in Part 5 above.

⁴⁴ Article 6.4 of the International Code reads:

The use by the health care system of “professional service representatives”, “mothercraft nurses” or similar personnel, provided or paid for by manufacturers or distributors, should not be permitted.

⁴⁵ Article 9 of the International Code reads

9.1 Labels should be designed to provide the necessary information about the appropriate use of the product, and so as not to discourage breastfeeding.

....

9.3 Food products within the scope of this Code, marketed for infant feeding, which do not meet all the requirements of an infant formula, but which can be modified to do so, Should carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant. Since sweetened condensed milk is not Suitable for infant feeding, nor for use as a main ingredient of infant formula, its label should not contain purported instructions on how to modify it for that purpose.

⁴⁶ WHA resolutions 58.32[2005] and 63.23[2010] prohibit claims unless national legislation allows.

⁴⁷ Misperceptions and misuse of Bear Brand coffee creamer as infant food: national cross sectional survey of consumers and paediatricians in Laos BMJ 2008; 337:a1379

14. Implementation and Monitoring

Extract from Nestlé Instructions, Page 22:

Art. 11.1 Implementation and interpretation of the Code in each country is the responsibility of the government (usually the health authorities). Nestlé Market Managers should make every effort, in co-operation with our competitors, to encourage the development of clear and unambiguous national codes where these do not yet exist.

Art. 11.3 Internal monitoring of the correct implementation of these Instructions and or the national code if it exists.....

ICDC: Working for clear and unambiguous national codes would seem to be an honourable objective. However, in adopting the International Code, WHA resolution 34.22 [1981] called on Member States to translate the International Code into national legislation, regulations or other suitable measures. National codes, unlike legislation, are not binding so it is evident that Nestlé is pushing for the lowest common denominator where Code implementation is concerned. In reality, Nestlé has interfered with national legislative processes to erode provisions which protect breastfeeding. This has happened in India, Gabon, Pakistan, Sri Lanka, Swaziland, Uruguay, Zimbabwe⁴⁸ and Laos.⁴⁹ Interference of this sort frustrates the obligation of governments to regulate the marketing of breastmilk substitutes to protect breastfeeding. It subverts national efforts to uphold the rights of children to the highest attainable standard of health as enshrined in the Convention on the Rights of the Child. Interference with national legislative processes also undermines the sovereignty of nation states.

Regardless of national measures, Nestlé is responsible under Art. 11.3⁵⁰ to ensure that its conduct at every level conforms to the International Code. However, Nestlé requires its employees to abide only by its Policy and Instructions and or the national code if it exists, NOT the whole International Code and relevant WHA resolutions. Since the Nestlé Instructions and the national codes of many countries fall below the minimum standard of the International Code, it is no wonder that Code violations by Nestlé are widespread.⁵¹

Conclusion

Nestlé has repeatedly stated its support for the International Code. In an increasingly aware civil society where corporate accountability is expected, Nestlé cannot afford to do otherwise.

Nestlé has gone to great lengths to enhance its corporate image but its disdain for the International Code is manifested in a 1998 interview given by Helmut Maucher, the then Chairman of Nestlé, who put his views across as follows:

“Codes like this, (the International Code) slow down business; Codes of ethics have never worked, there are too many cultural differences; when there is competition, they (codes) are not observed; when they are too general, they are no use. If on the other hand, they are too detailed, they are difficult to apply. What’s more they prevent competition.”⁵²

⁴⁸ Third World Resurgence No 95 at pages 6-7.

⁴⁹ Open letter dated 24 May 2011 from 19 Laos-based international NGOs accused Nestlé among other things of actively working to dilute and weaken the national regulatory framework in Laos.

⁵⁰ Article 11. 3 of the International Code reads:

Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.

⁵¹ For examples of Nestlé violations, check the IBFAN website a www.ibfan.org for global monitoring reports under the section on “Code Watch”.

⁵² Translated verbatim from a report by Feruccio Petracco, economic journalist and Director of the P.I. Agency and shown on French TV “Canal +”.

Our analysis shows that Nestlé's policy of compliance with the International Code is nothing more than a concerted effort to simply avoid many of the core provisions of this Code. Nestlé's interpretations skate on the periphery of the International Code to satisfy the casual observer. Anyone familiar with the provisions of the Code and other WHA resolutions will have to agree that the Nestlé Instructions fall short in more than a dozen areas described. Yet, Nestlé has declared that "the Nestlé Code ... is actually stricter than the WHO Code."⁵³

There is an obvious contradiction between the business views of Nestlé's managers and the company's official policy just as there are substantive differences between the "Instructions" and the International Code. Pit the entire Nestlé machinery behind the business interests and one wonders what chances babies and young children have in the name of nutrition.

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⁵³ Statement made by a Nestlé Representative at the Nestlé's "commitment to Africa" meeting for investors, at the Institute of Civil Engineers, Parliament Square, London on 22 March 2005.