

NESTLÉ AND THE INTERNATIONAL CODE: WHERE DO THEY DIFFER?

A dozen ways in which Nestlé misinterprets the International Code.
An analysis by the International Code Documentation Centre.

Introduction

The aim of the International Code is to contribute to the 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 many companies try to circumvent the provisions of the International Code by interpreting it as narrowly as possible. Most important are attempts firstly, to exclude many parts of the world from its coverage; secondly, to confine its scope to only a limited range of products. Thirdly, hardly any attention is paid to subsequent World Health Assembly (WHA) resolutions which seek to clarify the International Code and keep pace with scientific knowledge and marketing trends.

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

Nestlé's interpretation of the International Code is contained in a 43-page booklet: **Nestlé Instructions for Implementation of the WHO International Code of Marketing of Breastmilk Substitutes (updated July 2004)** – a manual to all companies of the Nestlé group, its agents and distributors. The principles underlying these Instructions are reflected in **Nestlé's Charter**^a which sets out the company's infant formula policy in developing countries.

1. Universality of the International Code

Extract from Nestlé Instructions, Page 4:

The Nestlé Instructions...give precise implementation guidelines on Company policy with regard to the WHO Code to market management and personnel at all levels concerned with the marketing of all products marketed as breastmilk substitutes by Nestlé (1).

The WHO has consistently clarified that it is governments who have the responsibility for defining what is an acceptable 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 in view of gaps in some countries' implementation of the WHO Code and public health concerns in the developing world, the Nestlé Instructions have been voluntarily issued to apply to all developing countries (2).^b

(1) includes a) all infant formula and b) all follow-up formula products except in the rare instances where they have brand/label design which is distinctly different from infant formula (eg. Follow-up formula NAN 2 and NAN 3 are covered by these Instructions as they have the same brand as the infant formula NAN 1).

(2) All countries or territories of Africa, Middle East, Asia, Latin America, the Caribbean Nations except Japan, Republic of Korea, Singapore, Taiwan and Hong Kong. In Eastern Europe the Nestlé instructions apply in those countries that are not members of the European Union. In developed countries Nestlé respects National Codes, regulations and/or other applicable legislation relating to the

^a On 9th April 1999, the Advertising Standards Authority (ASA) in the United Kingdom discredited the Nestlé Charter which contains a claim that Nestlé is committed to the International Code in developing countries. The ASA ruled that the claim could not be substantiated by Nestlé's practice.

^b See discussion in Part 1 below regarding universal applicability of the International Code. Comments on Nestlé's footnote (1) regarding scope appear in Part 2.

marketing of infant formula, such as the European Union Directive 91/321/EEC on Infant Formulae and Follow-on Formulae which applies to all EU member States.

ICDC: Nestlé portrays that the International Code applies only to developing countries. No such distinction 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 letter 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...” concluding that “.. 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...”^c [emphasis added]

The International Code was adopted by the World Health Assembly (WHA) in 1981 by Member States as a minimum measure to promote breastfeeding and to regulate the inappropriate marketing of breastmilk substitutes. Nestlé was involved in the consultation process of the drafting of the International Code. It approved the recommendations resulting from the 1979 preparatory meeting. It is hence morally obliged to implement the minimum standards prescribed by the International Code anywhere it has business activities independent of national measures.^d

2. Scope

Extract from Nestlé Instructions, Page 10:

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 all follow-up formula products, except in the rare instances where they have distinctly different brand/label design which clearly distinguishes them from infant formula.

ICDC: Apart from infant formula, Nestlé maintains that “breastmilk substitutes” include all follow-up formula products except where they have brand/label design which is distinctly different from infant formula. There is no justification for such a qualification on follow-up formula. Whether or not a product is a breastmilk substitute depends on whether it is marketed or represented as suitable to replace the breastmilk part of the babies’ diet. A product’s name and design are not determinants for its categorisation.

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

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

^d See discussion in Part 12 regarding implementation and monitoring of the International Code.

^e Art. 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.

This is wrong for 2 reasons:

1) Art. 10 pertains only to quality^f of food for infants.⁹ Art. 10 does not refer to the scope of the International Code which is defined in Art. 2.

2) The Codex Standards referred to in Art. 10 are not confined to infant formula alone but to all food products within the scope of the International Code. For example, there are 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 as suitable for babies below 6 months are also breastmilk substitutes.^h

Why does Nestlé refer only to Codex Standard 72-1981 on Infant Formula? The reason is obvious - by confining the scope to infant formulas and certain follow-up formulas only, a wide range of products drops out of the purview of the International Code. The wording of Art. 2, however, covers all substitutes which replace breastmilk totally or partially; feeding bottles and teats.

The term “breastmilk substitutes” is defined in Art. 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”. This includes infant formulas; special formulas; all follow-up formulas; infant teas and drinks whenever these are “represented as suitable for infants”; commercially processed baby foods; cereals and infant meals. In short, all products marketed for an age when breastmilk best fulfils the infant’s diet.

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 ...”ⁱ

^f Art. 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.

⁹ In Art. 2.2.1 of Codex Std 72-1981, the term “infant” means a person not more than 12 months of age.

^h World Health Assembly Resolution 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 age or beyond. An earlier 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.

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

3. Information and Education

Extract from Nestlé Instructions, Pages 11 and 12:

Art. 4.2 ... Only information intended for mothers that deal with the explanation and instructions for use of specific formula may bear corporate and product brands. In order to avoid confusion with other formula products or milk products inappropriate for use as breast-milk substitutes, they may include a packshot of the specific 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 be used only to enhance the educational value of information and must not idealise formula feeding. The same restraint should generally be observed for pictures or texts used in those informational and educational materials.

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, breast-feeding booklets, weight/growth charts, vaccination and health cards, height measurement charts, films and slide presentations, video cassettes, CD-ROM's etc., **must not contain illustrations of infant formula or mention the names of individual formula brands. Corporate name or logo may be used...**

Note: Materials covered under Articles 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 formula of an educational nature which explains when the use of an infant formula may be necessary, and the precautions for correct use.

ICDC: Art. 4 provides that the dissemination of objective and consistent informationⁱ 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. This requirement is omitted from the Nestlé Instructions.

ⁱ Art. 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.

Nestlé makes a distinction between materials covered by Art. 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 Art. 4 must be read in conjunction and all materials falling under Art. 4.2, may not bear product brands and packshots because such images violate Art. 4.3.

Nestlé represents that materials under Art 4.2 are intended for use by health workers in instructing mothers who have to use breastmilk substitutes. There is no such provision in Art 4.2. Nestlé wrongly imports the provisions^k of Art 6.5 into its interpretation of Art 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 indiscriminately to mothers^l.

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.^m

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 Art. 5.1, Nestlé cannot use Art. 4 as a back door for access to the general public.ⁿ

Health workers have no need to give instruction leaflets which carry brand names and pack shots to parents because explanations and instructions for use should be 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.

4. The general public and mothers

Extract from Nestlé Instructions, Page 13 and 14:

[Art. 5.1 Information relating to formula must not be communicated directly to mothers or the general public either through public media or by personal contact between company representatives and the public. This](#)

^k Art 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.

^l See also discussion on health workers in Part 8 below.

^m 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.

ⁿ See also discussion on the general public and mothers in Part 4 below.

restriction also applies to information put on Nestle web-sites. This 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 (for example, containing infant formula or feeding bottles or other baby accessories)
- distribution to mothers of materials of 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 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 formula. Requests for information on health matters or general information on formula 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 Art. 5.1 prohibit the distribution of non-educational materials but allow for general information on infant feeding and baby care which displays corporate and product names alongside idealising baby pictures.^o This interpretation negates the very foundation of the International Code which hinges on a ban on promotion as provided for under Art. 5.^p (See also discussion under Art. 4) It should be reiterated that the scope of the International Code covers all breastmilk substitutes, not just infant formula. (See discussion under Art.2)

Although Art. 5.5 of the Code refers to "direct or indirect contact of any kind", Nestlé only restricts "direct contact".

^o See also discussion on information and education in Part 3 above.

^p Art 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.

In addition, Nestlé mischievously introduces the 6 months exclusive breastfeeding recommendation into this sub-article. Art. 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 “6 months” and Nestlé is purely motivated by commercial interest in this respect.

5. Health care systems

Extract from Nestlé Instructions, page 15:

[Art 6.2. ...The distribution to health care facilities of educational materials bearing corporate identification, subject to the requirements of Article 4, is permitted.](#)

ICDC: Art. 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. Art.6.2 prohibits any facility of a health care system to be used for the purpose of promoting infant formula or other products within the scope of the International Code. Art 6.3 goes further to prohibit the display of company products, placards, posters and materials in facilities of the health care system.

6. Supplies

Extract from Nestlé Instructions, pages 16, 17 and 18:

[6.6 Infant formula and follow-on formula](#) 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 formula or follow-on formula for feeding infants who have to be fed with breast-milk substitutes, to serve social or humanitarian purposes.....

...

[emphasis added]

ICDC: Art. 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 formula and follow-on formula, 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 developed countries these products are labelled as suitable from 4 months while in developing countries promotional materials of complementary foods are targeted at babies younger than 6 months even though labels have changed to 6 months. These products effectively become breastmilk substitutes when they are marketed or represented as suitable for babies below 6 months.

Art. 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.

7. Equipment and materials

Extract from Nestlé Instructions, page 18 :

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. ...

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 formula brand but may bear the Corporate logo....

ICDC: The intent of 6.8^q when adopted was to allow for some minimal recognition of the donors of large items such as incubators, refrigerators and air conditioners. There was no question of “low-cost service items”. Public display of such items in hospitals or clinics confers medical endorsement to companies and their products which 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! Promotional mischief, pure and simple. The kind of mischief 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.^r

If donations of equipment and materials which bear a company’s name or logo must be made, care must taken to ensure that there are no public displays of these materials in line with Art. 6.3^s. It is also worth noting that the requirements of Art. 4.3^t are not abrogated by Art. 6.8 and that they must be complied with.

^q Art. 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.

^r See also discussion on financial and other forms of inducement to health workers in Part 8 below.

^s Art. 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.

^t Art. 4.3 of the International Code reads:

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.

8. Health Workers

Extract from Nestlé Instructions, Page 18:

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.

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 breast-milk 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 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.

[emphasis added]

ICDC: Nothing in Art 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.^u

Art. 7.2 allows product information to health professionals only, not the wider class of health workers. Other health workers should be considered as part of the general public. Art. 6.5^v requires health workers to demonstrate the use of infant formula to mothers who need to use the product. Nestlé misinterprets Art. 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

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

^v Art. 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.

preparation instructions from product labels and there should be no necessity to rely on company materials. Since companies have refused to place warnings about intrinsic contamination, WHO, has in collaboration with FAO, issued several guidelines in 2007 on safe preparation, storage and handling of powdered infant formula in care settings and in the home environment. Hence, there is no requirement for health workers to be given additional materials in this respect.^w

Inducements referred to under Art. 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.^x 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. The ambiguity surrounding the term has its advantage. It gives a lot of room for manoeuvre and license for abuse giving rise to "conflicts of interest" which WHA resolution 58.32 [2005]^y seeks to avoid.

9. Samples

Extract from Nestlé Instructions, Page 19:

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

- to introduce a new formula product;
- to introduce a new formulation of an existing product;
- to introduce our 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

ICDC: There is only one exception to the ban on samples under Art.7.4: professional evaluation or research at the institutional level.^z One or two cans to individual health workers are inadequate for evaluation or research for which protocols are required. Giving a few cans to health workers is purely promotional and therefore objectionable.

Furthermore, why should every new health professional be given Nestlé's samples if not for the purpose of establishing contact and promoting goodwill?

10. Sponsorship

Extract from Nestlé Instructions, Page 20:

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

^w See also discussion on information and education under Part 3 above.

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

^y 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.

^z Art. 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.

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.^{aa}

Even if Nestlé's 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 proportionate 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.

11. Persons employed by Manufacturers and Distributors

Extract from Nestlé Instructions, Page 21

Art. 8.2 Company personnel 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.

However, company 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: Nestlé omits any mention of Art. 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 Art. 5.5 narrows the age range for prohibition of contact to mothers with infants below 6 months of age.^{bb}

Reliance placed by Nestlé on Art. 6.4 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.

12. Implementation and Monitoring

Extract from Nestlé Instructions, Page 23:

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-

^{aa} Art. 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.

^{bb} See also discussion on general public and mothers in Part 4 above.

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], calls 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 and Zimbabwe.^{cc} Interference of this sort frustrates the obligation of governments to regulate the marketing of breastmilk substitutes to protect breastfeeding and 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. 11.3^{dd} to ensure that its conduct at every level conforms to the International Code. Nestlé requires its employees to abide only by its 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^{ee}.

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.”^{ff}

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

^{cc} Third World Resurgence No 95 at pages 6-7.

^{dd} Art. 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.

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

^{ff} Translated verbatim from a report by Feruccio Petraco, economic journalist and Director of the P.I. Agency and shown on French TV “Canal +”.

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 the dozen areas described. Yet, Nestlé recently declared that “the Nestlé Code ... is actually stricter than the WHO Code.”⁹⁹

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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⁹⁹ 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.