

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.

Endeavours by companies to circumvent the provisions of the International Code and to interpret the International Code narrowly are therefore common. Most important are attempts to confine its scope to only a limited range of products and to exclude many parts of the world from its coverage. Also, hardly any regard is paid to subsequent World Health Assembly (WHA) resolutions which seek to clarify the International Code and keep pace with marketing developments and scientific knowledge.

The following is an analysis of the many ways in which one of the biggest baby food manufacturers in the world, Nestlé ¹, interprets the International Code, how it differs considerably from the International Code itself, and how the company creates opportunities for continued promotion.

Nestlé's interpretation of the International Code is set out in its booklet: **Nestlé's Instructions for the Implementation of the WHO International Code of Marketing of Breastmilk Substitutes (updated July 1996) - a manual for companies of the Nestlé Group and its agents and distributors**. The principles underlying these Instructions are reflected in **Nestlé's Charter** ² which sets out the company's infant formula policy in developing countries³.

¹ Why Nestlé? Nestlé controls approximately 26% of the world wide market for baby food. It operates in over 100 countries, and sales of infant nutrition products in 2003 are estimated at CHF 4 billion. Due to its size and the extent of its business, Nestlé exerts a powerful influence on governments and influences market trends and company behaviour more than any other single food company.

² 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.

³ See discussion in Part 1 regarding the universal applicability of the International Code.

1. Universality of the International Code

Extract from Nestlé Instructions, Page 2:

...The Nestlé Instructions apply to the developing countries (2) where no national code or other official measure implementing the International Code of Marketing of Breastmilk Substitutes is in force. ...

(2) All countries of Africa, Middle East, Asia, Latin America (*sic.*), the Caribbean Nations, and the Pacific Nations except Japan, Republic of Korea, Singapore, Taiwan and Hong Kong (until 01.07.1997). In developed countries Nestlé respects National Codes,

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...”⁴

[emphasis added]

The International Code was adopted at the 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.⁵

⁴ Letter from Dr Hiroshi Nakajima, former Director General of WHO and Mr. James Grant, former Executive Director UNICEF dated 9 July 1991.

⁵ See discussion in Part 12 regarding implementation and monitoring of the International Code.

2. Scope

Extract from Nestlé Instructions, Page 4:

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), i.e. infant formulae which are suitable for use as the sole source of nutrition for a baby during the first 4 to 6 months of life (see Article 10.2).

NOTE: The following Nestlé products are not covered by the Code: *Follow-up formulae**, *Sweetened Condensed Milk*, *Evaporated Milk*, *Skimmed Milk*, *UHT Milk*, *Full Cream Powdered Milk*, *Cereal Foods*, *Growing Up Milks*, and *Sterilized Meat, Vegetable and Fruit preparations for babies*.

ICDC: Instead of quoting from Art. 2⁶ which defines the scope of the International Code, Nestlé draws the scope from Art. 10⁷ and Codex 72-1981 on Infant Formula. This is wrong for 2 reasons:

1) Art. 10 pertains only to quality of food for infants.⁸ 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].

Why does Nestlé refer only to Codex Standard 72-1981 on Infant Formula? The reason is obvious - by confining the scope to infant formula 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 formula; special formulas; follow-up milks; 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.⁹

The following WHA resolutions support a wide interpretation of the scope.

WHA 39.28 [1986] “Any food or drink given before complementary feeding is nutritionally required may interfere with the initiation or maintenance of breastfeeding and therefore should neither be promoted nor encouraged for use by infants during this period; the practice being introduced in some countries of providing infants with specially formulated milks (so-called follow-up milks) is not necessary.”

WHA 45.34 [1992] The WHA “reaffirmed that during the first four to six months of life no food or liquid other than breastmilk, not even water, is required to meet the normal infant’s nutritional requirements, and that from the age of about six months* infants should begin to receive a variety of locally available and safely prepared foods rich in energy, in addition to breastmilk, to meet their changing nutritional requirements.”*

*WHA 47.5 [1994] Member States are urged to “foster appropriate complementary feeding practices from the age of about six months.”**

WHA 49.15 [1996] Member States are urged “to ensure that complementary foods are not marketed for or used in ways that undermine exclusive and sustained breastfeeding.”

** See footnotes 9 and 15 on the controversy regarding the optimal period of exclusive breastfeeding which is now set at 6 months under WHA resolution 54.2 (2001).*

ICDC is not alone in pointing out Nestlé’s misinterpretation of the scope of the International Code; 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 ...”¹⁰

⁶ 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.

⁷ 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.

⁸ In Art. 2.2.1 of Codex Std 72-1981, the term “infant” means a person not more than 12 months of age.

⁹ With the adoption of World Health Assembly Resolution 54.2 (2001), the recommendation now is to exclusively breastfeed for 6 months with continued breastfeeding for up to 2 years and beyond. In April 2003, Nestlé announced that it had “completed label changes on complementary foods to follow the six-month recommendation in developing countries”.

¹⁰ 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 5 and 6:

4.2 ... Only information intended for mothers that deals with the explanation and instructions for use of specific infant formula such as preparation instructions and prescription leaflets should bear corporate and product brands. In order to avoid confusion with other infant formula products or milk products inappropriate for use as breastmilk substitutes, they may include a packshot. Such materials must include the information specified in this article of the WHO Code.

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.

Baby pictures may be used only to enhance the educational value of information and must not idealize formula feeding....

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 and slide presentations, video cassettes, CD-ROM's etc., **must not contain illustrations of infant formula or mention the names of individual infant formula brands. Corporate name or logo may be used...**

ICDC: Art. 4¹¹ provides that the dissemination of objective and consistent information is the responsibility of governments. Companies may only provide informational and educational equipment and materials at the request and with the written approval of governments and then only if they comply with special requirements.

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's vested interest can be seen in the conflicting images shown in their informational and educational materials. For example, in Thailand, a Nestlé brochure for its NAN 1 infant formula starts with the statement that "breastmilk is best" on a page showing the face of a baby opposite another page showing the mother's breast. The brochure opens up to dramatically and symbolically separate the baby from the breast with a picture of the NAN 1 product. The accompanying slogan "NAN 1 is closer than ever...." idealises the product. Furthermore, since these materials are given to health workers for use in their work with

mothers, they fall foul of Art. 7.2¹². This Article determines that product information provided to health professionals (not the wider class of health workers), should be restricted to scientific and factual matters and should not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding.

Nestlé claims its materials cater to the needs of minority language groups, semi-illiterate 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 public¹³.

Health workers should not need to give instruction leaflets to parents which carry brand names and pack shots because explanations and instructions for use should be clearly printed on labels or on attached or under the lid instruction leaflets, both of which are governed by specific rules under the Code. When materials are presented by health workers to mothers, they are perceived as product endorsements even when there is only a corporate logo or name on them. 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.

¹¹ 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.

¹² Art 7.2 of the International Code reads:

Information provided by manufacturers and distributors to health professionals regarding products within the scope of this Code should be restricted to scientific and factual matters, and such information should not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding. It should also include the information specified in Article 4.2.

¹³ See discussion in Part 4 on the general public and mothers.

4. The general public and mothers

Extract from Nestlé Instructions, Page 7:

5.1 Information relating to infant 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 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 infant formula brands and may not be used as advertising or promotion

ICDC: Any form of promotion (direct or indirect) of products covered by the International Code is prohibited under Art. 5.¹⁴ The prohibition covers all breastmilk substitutes, not just infant formula. Follow-on milks, infant teas, juices and other drinks also replace breastmilk. These, as well as cereals, vegetable mixes, and other complementary foods for use under 6 months¹⁵ should therefore never be promoted in the health care system.

Also, 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”. The provisions of Art. 5 and the 1996 resolution are wide enough to cover so-called informational and educational materials which carry corporate names and logos, as prescribed by Nestlé and discussed in Part 3 above .

¹⁴ 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.

¹⁵ WHA resolution 54.2 [2001] puts and end to the controversy regarding the optimal period of exclusive breastfeeding and unequivocally sets "6 months" as a global public health recommendation. Sustained breastfeeding is recommended for up to 2 years and beyond . WHA resolution 54.2 [2001] supersedes WHA Resolution 47.5 [1994] which recommended exclusive breastfeeding "for about 6 months" and earlier recommendations including the International Code which mentioned "4 to 6 months".

5. Health care systems

Extract from Nestlé Instructions, page 10:

....

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 11 and 12:

...

6.6 Free or low-price (I) infant formula supplies may not be donated to maternity wards and hospitals for use by healthy newborn babies except where national rulings allow the company to respond to a health worker's written request for infant formula for social welfare cases (e.g. multiple births, where a mother has died, etc.) In such cases, the label or lid must be clearly marked with a sticker stating:

"Free supply (or reduced-price supply) for use at the discretion of the health services or medical profession; for infants who have to be fed on breastmilk substitutes."

...

(I) low-price means a price below the best wholesale price. However, Nestlé subsidiaries and distributors may submit lower price bids for public infant formula tenders in accordance with national requirements.

6.7 In cases where free or low-price supplies of infant formula are used outside an institution, ...

ICDC: Neither breastmilk substitutes (which include infant formula) nor feeding bottles and teats may be donated to any part of the health care system. Nestlé confines the restriction against donations to "maternity wards and hospitals" thereby allowing donations to paediatric wards and other parts of the health care system.

Art. 6.6 and 6.7¹⁶ must be read together with Art 6.2¹⁷ and later relevant WHA resolutions. The purpose was to eliminate the easy availability and routine use of products within the health care system. The "institutions" mentioned in Art.6.6 and 6.7 were intended to be orphanages and the like, where infants stay for extended periods, not clinics, hospitals and maternity wards.

In WHA Resolution 39.28 [1986], Member States are urged to ensure that the small amounts of breastmilk substitutes needed for the minority of infants who require them in maternity wards and hospitals are purchased and NOT made available through free or subsidised supplies.

Giving free formula to hospitals has long been industry's most powerful marketing technique. Because of consistent violations of Art. 6.6 & 6.7, WHA Resolution 47.5 [1994] urges Member States once again to ensure that there are NO 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.

Nestlé's use of the term "healthy born babies" can be exploited to limit restriction on promotion to infants in good health by classifying others, such as premature or allergy prone babies, as needing breastmilk substitutes.

¹⁶ Art. 6. 6 and 6.7 of the International Code read:

6.6 Donations or low-price sales to institutions or organizations of supplies of infant formula or other products within the scope of this Code, whether for use in the institutions or for distribution outside them, may be made. Such supplies should only be used or distributed for infants who have to be fed on breastmilk substitutes. If these supplies are distributed for use outside the institutions, this should be done only by the institutions or organizations concerned. Such donations or low-price sales should not be used by manufacturers or distributors as a sales inducement.

6.7 Where donated supplies of infant formula or other products within the scope of this Code are distributed outside an institution, the institution or organisation should take steps to ensure that supplies can be continued as long as the infants concerned need them. Donors, as well as institutions or organizations concerned, should bear in mind this responsibility.

¹⁷ Art. 6.2 of the Code reads:

No facility of a health care system should be used for the purpose of promoting infant formula or other products within the scope of this Code. This Code does not, however, preclude the dissemination of information to health professionals as provided in Article 7.2.

7. Equipment and materials

Extract from Nestlé Instructions, page 13 :

...

Equipment such as incubators and audio visual equipment (hardware and software) and low-cost service items, such as diaries and gestation calendars, for the use of health workers may bear the company name and 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
- feeding bottles

ICDC: Nestlé takes liberty with Art 6.8¹⁸ by giving service items which are used publicly in health facilities. 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! Despite the wording of Art. 6.8, it could be argued that its provisions must be read in the light of Art. 5.1 and 6.2 which prohibit all forms of promotion to the public and in facilities of the health care system. If donations of equipment and materials which bear a company's name or logo must be made, care must be taken to ensure that there are no public displays of these materials in line with Art. 6.3¹⁹. It is also worth noting that the requirements of Art. 4.3²⁰ are not abrogated by Art. 6.8 and that they must be complied with.

Allowing for the supply of feeding bottles is particularly objectionable as feeding bottles come under the purview of the International Code and the donations of free or subsidised supplies of products covered by the International Code were proscribed in Art. 5.2 and in WHA Resolution 47.5 [1994].

¹⁸ 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.

¹⁹ 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.

²⁰ 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 14:

7.1 Health workers' responsibility. Nestlé will cooperate in these efforts by providing upon request, and whenever possible, culturally appropriate educational materials (videos, brochures, posters) promoting breastfeeding.

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

...

Information on infant formula intended for health professionals may bear corporate and product brands (packshot permitted) and must include 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.

7.3 Financial or material inducements to promote infant formula may not be offered to health workers or

ICDC: Nothing in the International Code requests companies to help promote breastfeeding. Indeed, companies manufacturing or distributing breastmilk substitutes must NOT promote breastfeeding as there is a clear conflict of interest. As Calvin Coolidge once said: the business of Business is business.

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.

Inducements can take many forms. They can nearly always be translated into financial support or advantage giving rise to obvious "conflicts of interest" which WHA Resolution 49.15 [1996] seeks to avoid. Value is not always a prime consideration. Even small gifts such as pens and note pads can be inducements. 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.

9. Samples

Extract from Nestlé Instructions, Page 15:

7.4 Samples of infant formula may be provided to individual health workers (except where national rulings disallow same -- *) 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 professionals for this purpose and one time only....

* In Southern Africa, eg. South Africa, Botswana, Lesotho, Namibia and Swaziland, an agreement was reached between National Health and the Infant Food Industry to phase out the practice of issuing free samples of breastmilk substitutes to hospitals and

*ICDC: In all the above instances, the underlying objective is promotional. They are therefore objectionable. Why should every new doctor receive Nestlé or any other company's samples? Is Nestlé seeking medical endorsement for its products? Health workers may be given samples of products covered by the International Code, or equipment or utensils for their preparation and use at the institutional level, ONLY when such are necessary for professional evaluation and research. Routine or regular distribution of samples is not allowed. Health workers may not pass on any samples they may have received.*²¹

²¹ 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.

10. Sponsorship

Extract from Nestlé Instructions, Page 15:

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 Market Management... Financial or other support does not imply endorsement of Nestlé policies or activities by the recipients. Preference will be given to support for nominees of associations or institutions. Requests for support must be confirmed in writing by a responsible officer of the association/institution concerned. Guidelines for such support established by

ICDC: A loophole in the International Code does allow contributions to health workers for fellowship, research and the like, but requires manufacturers and distributors to disclose any such contributions to the relevant institution.²² Nestlé omits to mention this.

Even if Nestlé's Instructions claim that financial or other support does not "imply endorsement" it goes a long way to provide goodwill. Why else would the company spend considerable sums on this?

In 1996, WHA Resolution 49.15 was adopted whereby Member States are urged to ensure that the financial support for professionals working in infant and young child health does not "create conflicts of interest".

²² 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.

11. Labelling

Extract from Nestlé Instructions, Page 17:

....

Nestlé infant formula labels have been developed in consultation with WHO and comply with the WHO Code

ICDC : The International Code requires labels to conform to certain standards. WHO is not a vetting organisation. Since Nestlé makes the above claim, ICDC looked for evidence. There is no evidence of WHO officially endorsing Nestlé's product labels. All that could be found on record is a 1982 Nestlé-commissioned study on labelling by the Program for Appropriate Technology in Health (PATH) which is an organisation separate from WHO. PATH solicited input from WHO, IBFAN and other bodies in the preparation of the study. That "consultation" did not, however, result in anything concrete or in writing from WHO, at least not in the public domain. The onus is therefore on Nestlé to prove the truth of its claim.

12. Implementation and Monitoring

Extract from Nestlé Instructions, Page 20:

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

ICDC: Working for clear and unambiguous national measures would seem to be an honourable objective. However, nothing in the International Code requires companies to encourage national codes. And, in reality, Nestlé, has already interfered with national legislative processes to erode provisions which protect breastfeeding. This has happened in India, Gabon, Pakistan, Sri Lanka, Swaziland, Uruguay and Zimbabwe.²³ Interference of this sort undermines the sovereignty of nation states and compromises the rights of children to the highest attainable standard of health as enshrined in the Convention on the Rights of the Child.

Regardless of national measures, Nestlé is responsible under Art. 11.3²⁴ to ensure that its conduct at every level conforms to the International Code. It is pertinent to note in this regard that Art. 11.3 as reproduced in the Nestlé Instructions is differently worded. Nestlé omits the words which require its “conduct at every level” to conform to the International Code.²⁵ By omitting these, Nestlé seems to prefer its employees to abide only by its Instructions, NOT the whole International Code and relevant WHA resolutions.

²³ Third World Resurgence No 95 at pages 6-7.

²⁴ 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.*

²⁵ Compare the actual wording in italics in Art. 11.3 (footnote 25 above) to the version reproduced at page 20 of Nestlé Instructions and set out below:

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, *so that appropriate action can be taken. The appropriate governmental authority should also be informed.*

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.”²⁶

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 the dozen areas described. Yet, Nestlé recently declared that “the Nestlé Code ... is actually stricter than the WHO Code.”²⁷

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 policy 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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²⁶ Translated verbatim from a report by Feruccio Petracco, economic journalist and Director of the P.I. Agency and shown on French TV “Canal +”.

²⁷ 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.