

Breaking the Law



and undermining Breastfeeding

Series 4 (2007)

Pursuits of Social Responsibility

My great gratification to work with Dr. Nyaz Buch is not as because of his extended support and a helping hand to me but for his great sense of feeling towards the infants and young children of Srinagar.

He caught a Nestle representative couple of months back who was illegally distributing baby food literatures to the pregnant women and lactating mothers in his clinic at Srinagar has become a boiling issue of recent days. Mr. Mike Brady of Baby Milk Action has taken up this matter with Nestle chief Mr. Peter Brabeck and wanted him to take action against the violation of IMS Act by Nestle India. Meanwhile, he asked BPN I to interpret the whole incident about what exactly happened in the hospital. Accordingly, I called up Dr. Nyaz and asked him to describe the Nestle incident. Within hours he replied describing the whole incident. Although the whole communication was so fast, we had been able to interpret the incident to Mr. Brady just within a day.

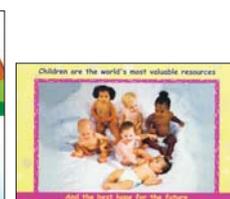
The interpretation of the incident was at the right time that added meaningful contribution to Mr. Brady's mission who since many years had been fighting for the rights of infants. I was so amused the way Dr. Nyaz had responded to the infant's cause. More amazing was his reaction to take a stern step against Nestle India.

Dr. Nyaz could understand the importance of preventing representatives of baby food companies from illegally publicizing and selling of infant foods. Dr. Nyaz has made one point very clear that he will never entertain any representatives involved in marketing of infant foods. This shows the ethicality of his professionalism and as well as his social responsibility. As a doctor you just not dignose the disease of a child but you should monitor and control the health system of your locality. Dr. Nyaz is just doing that. If all doctors act like Dr. Nyaz, I am quite optimistic that the problem of illegal marketing of baby foods will be stopped in India. The multinational companies including Nestle are relentlessly misusing the International Code for Protection and Promotion of Breastfeeding 1981 and are also flouting the IMS Act, 2003.



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Nestle Provokes Formula Feeding in Baby Care Book

Baby Care Book, a publication of Nestle India Limited, was published with an intention to educate the mothers of infants has deliberately sullied the IMS Act 2003. This book was supplied in bulk to many doctors and hospitals in Delhi for dispatching them to mothers, especially the pregnant women and lactating mothers.

The Baby Care Book covers a wide spectrum of information and subjects dealing with different development stages of infants. It covers crucial growth of infants when they cross different stages of the age, for instance, 3 months, 6 months, 10 months and 12 months. The strategies to deal with the babies, their illness, safety, proper nutrition and genre of such others like a balanced diet, use of breastmilk and dealing with the sickness of the babies were the numerous topics discussed in the *Baby Care Book*.

What the company didn't discuss in the book was about the promotion, benefits and superiority of breastfeeding. In some cases, they instead of writing the benefits of breastfeeding had provided

educational material on infant formula. Instructing and advising to the mothers of infants, the company in its *baby care book* mentioned 'partial breastfeeding' instead of "exclusive breastfeeding" and "use of infant formula" instead of "use of breastmilk" which are derogatory in nature and discourage mothers for breastfeeding and provoke formula feeding.

The Section 7 of IMS Act, 2003, has clearly demonstrated how to prepare educational and other such informative materials dealing with promotion of infant milk substitutes, feeding bottles and infant foods that intend to reach to pregnant women and mothers of infants. Section 7 of IMS Act has clearly described that educational material related to promotion of infant milk substitutes intended to reach to pregnant women and mothers of infants should include clear information related to benefits and superiority of breastfeeding, preparation and the continuance of breastfeeding, effects of bottle feeding, financial and social implications in making use of infant milk substitutes, feeding battles and health

hazards involved in improper use of infant milk substitutes and feeding bottles.

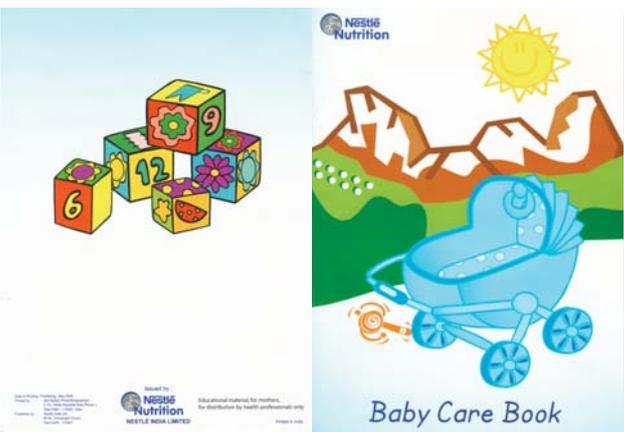
Besides this, the rule 9 of IMS Act also made it mandatory for all manufacturing and distribution companies of infant foods to clearly mention about all



advantages of colostrum, the contains of protein, the anti-ineffective properties of breastfeeding and the infertility benefits from breastfeeding.

Nestle should incorporate all the full information and guidelines as specified in clause (a) to (f) of sub-section (1) of section 7 of the IMS Act in its every educational or other promotional material, whether audio or visual, dealing with pre-natal or post-natal care or with the feeding of an infant and intended to reach pregnant women and mothers of infants, says legal expert.

According to our legal expert, incorporation of all the prescribed information in educational & information materials is mandatory in terms of Sec. 7 & Rules 9 of IMS Act. But Nestle India Ltd. has not printed the prescribed information as given in Sec. 7(1)(c) & (d) and Rule-9 (b)(i)(ii)(v)(vi). The company has tried to give an impression that infant formula fulfills all the nutritional needs of infants.



GlaxoSmithKine Consumer Health Care not Complying with the Specifications of IMS Act

The placard token delivered to Dr. Dinesh Khosla, a paediatrics of Rohtak city in Haryana, along with a letter by GlaxoSmithKine Consumer Health Care is an act of disobeying the provision of Infant Milk Substitutes, Feeding Bottle and Infant Foods (Regulation of Production, Supply and distribution) Act, 1992 (as amended in 2003).

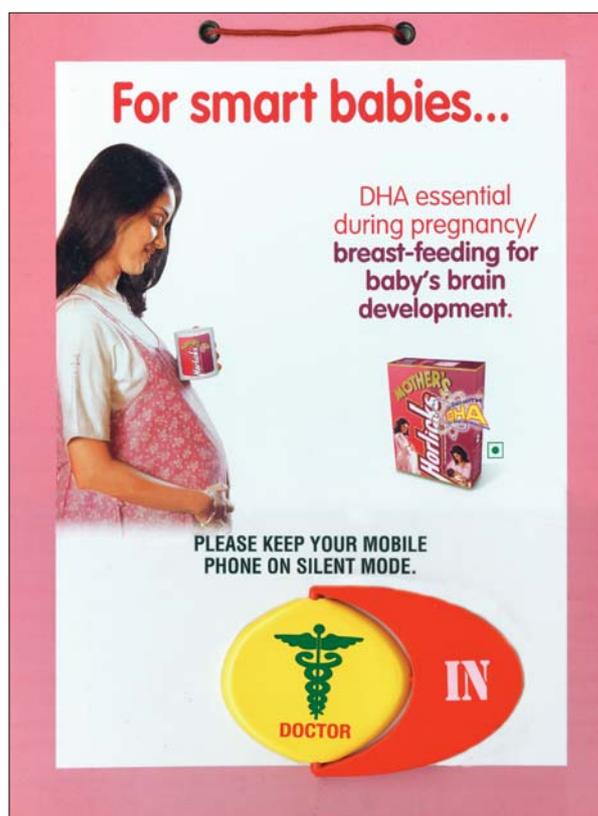
The placard depicts the picture of a glowing healthy pregnant mother. Besides the picture, there is also an advertisement of Mother's Horlicks showing a pregnant woman and a lactating mother, along with a token affixed on the placard. The placard has been sent along with a note to doctor for displaying the same in the clinic. The advertisement of mother's Horlicks and information depicted on the placard are bound to

catch the attention of visiting mothers at the clinic. This could lead to influence the mothers for purchasing the Mother's Horlicks, a product of GlaxoSmithKine Consumer Health Care that claims to have DHA, which helps the babies for

intellectual development.

The information posted in the official website of the company claiming that Mother's Horlicks contains unique formulation of DHA, essential vitamins and minerals to keep the mother and child in a state of good health. The other benefits for the mother, according to the company, are that during lactation the Mother's Horlicks help to improve the quality and quantity of breastmilk besides improving the birth weight of babies and their brain development.

However, the contents of the placard as well as the information provided by GlaxoSmithKline Consumer Healthcare in its official website infringes Section 7 of IMS Act 2003. According to our legal expert, it is mandatory to incorporate all the prescribed information on the placard in terms of the provisions of IMS Act as the advertisement of Mother's Horlicks fall within the ambit of material dealing with pre-natal and post-natal care and intended to reach pregnant women and mothers of infants. However, the company and its officials have deliberately omitted to print the same in the placard and are liable for contravening the mandates of the IMS Act 2003.



Baby Foods Manufactured by FDC Limited Claim to Reduce IMR in India

The greeting card of FDC sent to Dr. J.P.Dadhich of Sunder Lal Jain Hospital, Delhi, on Children's day, which is a dangerous course of manipulation of information on infant survival and protection of infant's right to food. FDC's specially designed card that intended to promote infant milk substitutes claiming to extend its partnership in reducing the infant mortality rate.

The card featured sound and healthy infants on its front and inner pages. On the back page of the card, the picture of a doctor examining a healthy baby has also been depicted. These two pictures apart, the company has printed the names of its two infant formulae (SIMYL-MCT, SIMYL LBW) and another product namely Simyl MCT Oil on the same page, describing the superiority of their nutritional values of infant formulae and source of energy of the oil.

The company has tried to give an impression that the infant formulae manufactured by the company will give better results for overall growth of the infants. To give that sort of impression or create a belief in such a manner that the feeding of infant milk substitutes and infant foods are equivalent to, or better than, mother's milk are prohibited under clause (b) of Section 3 of IMS Act 2003. Moreover, the clause (a) and

clause (c) of Section 3 of the IMS Act also prohibit all forms of advertisements or take part in the promotional activities for distribution, sale or supply or infant milk substitutes, feeding bottles or infant foods.

According to provisions of the IMS Act 2003, there is a complete restriction on advertisement, promotion and giving impression about the superior quality of infant formulae. However, FDC Ltd. has advertised its infant formulae through the card and tried to give impression that feeding of its formulae would reduce IMR. The officials of the companies tried to promote its range of products through doctors. This clearly indicates that the provisions of the IMS Act were not followed. FDC Ltd. and its concerned officials have deliberately misused the

mandates of IMS Act 2003.

Infant formula or infant milk substitutes are not the actual solution to address the problem of infant mortality in India. There are millions of families live in abject poverty who can't afford the cost of infant formulae. Malnutrition among infants is not only a cause of ill health or lack of access to infant milk substitutes, but it is the result of inappropriate breastfeeding practices and lack of basic education about breastfeeding. Proper attention to infants' healthcare in general and prevention of endemic diseases by early initiation of breastfeeding within one hour and exclusive breastfeeding for six months that prevent absorption of nutrients in particular could reduce the IMR in India in a great extend.

The image shows a two-page greeting card. The top page has a pink border and contains the following text: "With you always", "SIMYL-MCT The infant formula with baby-friendly nutrition", "Simyl MCT OIL The only energy source with 100% MCTs", "SIMYL LBW *1 Formula closest to WHO/FAO guidelines", and "FDC Limited". It features a photo of a doctor examining a baby. The bottom page has a yellow border and contains: "Children are the world's most valuable resources", "Today, the IMR* of India is 63", "The Indian Planning Commission in the Tenth Plan has outlined that we should achieve IMR of 30 by the year 2012.", "It is certainly possible.", "FDC partners you in your endeavor in providing a safe haven for our children", "and make it a happy children's day", and "And the best hope for the future". It features a photo of a group of diverse babies and a small photo of a baby.

BMA Cautions Nestle for Illegal Promotion of Baby Foods in India

Baby Milk Action (BMA) took stern steps against Nestle over illegal promotional activities in India. In replying to the accusation made by BMA, Nestlé, however, admits to some of the charges, but claims its activities are legal referring to the provisions of old IMS Act

1992 which was amended in 2003. Nestle was charged for illegal distribution of educational materials by a Nestle representative to the parents in a clinic at Srinagar which was not allowed under the provisions of IMS Act 2003. It also denies leaflets were distributed to

mothers at a clinic in Srinagar. The doctor, who is the in-charge of the clinic, confirmed the Nestle incident. Did Nestlé Chief Executive, Peter Brabeck-Letmathe, really act on his claim to personally investigate any hint of a violation?

The letter from Baby Milk Action

Dear Mr. Peter Brabeck-Letmathe,

As you know World Health Assembly Resolution 58.32 calls for care: "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."

One of the countries to act on this requirement is India, where the Infant Milk Substitutes Act prohibits: "any contribution or pecuniary benefit to a health worker or any association of health workers, including funding of seminar, meeting, conferences, educational course, contest, fellowship, research work or sponsorship."

However, it is reported that Nestlé is sponsoring and attempting to sponsor such events in India.

In addition it is reported that leaflets for *Lactogen* infant formula have been distributed directly to parents. As you know seeking direct contact with mothers and producing and distributing promotional literature is prohibited.

I request that you respect the World Health Assembly measures and the Indian Law and change your policies and practices immediately.

Mike Brady
Campaigns and Networking Coordinator
Baby Milk Action

Nestle's reply to Baby Milk Action

Dear Mike,
We refer to your e-mail addressed to Mr. Peter Brabeck-Letmathe alleging that Nestlé India has violated the Indian regulations governing the marketing of breast-milk substitutes [Provision of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992] hereafter referred as the "IMS Act".

[Baby Milk Action comment: It is curious that Nestlé refers to old legislation. This was amended in 2003 to update it and include the ban on commercial sponsorship of health workers and events. Nestlé opposed the changes, so it is certainly aware of them.]

Firstly, the allegation that scientific

symposiums organised by Nestlé in India are illegal. Those symposiums aim at fostering and facilitating sharing of scientific knowledge to and between doctors on topics totally unrelated to infant nutrition products such as "Common Liver Diseases" or "Current Trends on Paediatric Cardiology". No participant or any medical body is provided any pecuniary benefit in

relation to those scientific symposiums. There is, therefore, no violation of the law, neither in the contents of the symposiums nor in the way they are organised.

[Baby Milk Action comment: Nestlé admits to holding particular events, but claims they are permitted. The law is very clear in stating that the ban includes 'funding of seminar, meeting, conferences, educational course, contest, fellowship, research work or sponsorship'. Symposia clearly come within this description. The law specifies that companies manufacturing or distributing products within its scope are prohibited from funding such events, it does not say they can organise them if they promise not to refer to infant formula. Nestlé also sponsored cultural and sporting events for medical students, but does not reply on this point.]

Secondly, investigations carried out show that the leaflets carrying infant product information destined to health

professionals were not handed out by a Nestlé employee to parents in a clinic in Srinagar as alleged. The leaflets are intended for, and provided to, health workers as allowed by the IMS Act.

[Baby Milk Action comment: As our partners in India have confirmed the report with the doctor who seized 'hundreds of pamphlets' from a Nestlé sales representative, 'who was distributing them to parents' (see below). Why does Nestlé send a sales representative to a clinic with hundreds of leaflets if they are only for health professionals? Should we believe the doctor or Nestlé's Head of Corporate Affairs?]

It's the policy of our colleagues in Nestlé India to act in strict conformity with both the IMS Act and the WHO International Code of Marketing of Breastmilk Substitutes. This policy has been embodied in a charter for compliance and distributed both internally and externally to all those dealing with infant products. This demonstrates our commitment to the WHO Code/national

legislation no matter what country we are located in.

[Baby Milk Action comment: It is disappointing that Nestlé continues with this discredited claim. The Advertising Standards Authority investigated Nestlé's Charter after it made a similar claim in an anti-boycott advertisement and published a ruling in 1999 upholding all of Baby Milk Action's complaints. It said that while the Charter does indeed refer to the International Code, Nestlé claim that it shows it is committed to the Code has not been demonstrated. The Charter does not reflect all the provisions of the Code and Resolutions and monitoring evidence, such as the leaflets seized in India, demonstrates it is not followed.]

Yours faithfully,

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Senior Policy Adviser
Nestlé UK Ltd

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BPNI is a registered, independent, non-profit, national organisation that works towards protecting, promoting and supporting breastfeeding and appropriate complementary feeding of infants and young children. BPNI works through advocacy, social mobilization, information sharing, education, research, training and monitoring the company compliance with the IMS Act. BPNI does not accept funds or sponsorship of any kind from the companies producing infant milk substitutes, feeding bottles, related equipments, or infant foods (cereal foods).

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