



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our ref: L/M to FH CR 2/3821/11
Your ref:

Tel: (852) 3509 8915
Fax: (852) 2840 0467

25 May 2012

Ms Elyssa WONG
Clerk to Panel
Panel on Health Services
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong

Dear Elyssa,

Development of a Hong Kong Code of Marketing of Breastmilk Substitutes

During the discussion on the captioned at the Panel meeting held on 16 April 2012, the Administration was requested to provide response to questions raised by Members. I now set out our response below.

Current regulation on claims of infant formula and relevant enforcement actions

2. The Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) does not cover, among others, nutrition labelling and claim of –

- (i) formula intended to be consumed by children under the age of 36 months; and
- (ii) food intended to be consumed principally by children under the age of 36 months,

due to the special nutritional requirements of the above target subgroups and there are separate requirements on nutrition labelling for the above types of food in Codex guidelines.

3. However, Section 61(2) of the Public Health and Municipal Services Ordinance (Cap. 132) makes it an offence for any person who publishes or is involved in the publication of an advertisement, which (a) falsely describes any food or drug; or (b) is likely to mislead as to the nature, substance or quality of any food or drug. Upon conviction, he is liable to a fine at level 5 (HK\$50,000) and to imprisonment for 6 months. There has been no prosecution taken against advertisements of infant formula containing untruthful or misleading claims under Section 61(2) of Cap. 132 in the past two years. Five infant formulae have been suspected of containing misleading claims. Legal advice from the Department of Justice is awaited.

Monitoring mechanism on compliance with the Hong Kong Code of Marketing of Breastmilk Substitutes (HK Code)

4. The HK Code will be implemented in the form of voluntary guidelines in tandem with an appropriated monitoring mechanism. At present, many countries like Australia, New Zealand, Singapore and Malaysia, etc, have formulated voluntary guidelines applicable in their own countries for compliance by the trade with reference to the WHO Code. The Taskforce on the Hong Kong Code of Marketing of Breastmilk Substitutes (the Taskforce) will study and formulate a suitable monitoring mechanism for the effective control of the undesirable marketing practices, taking into account relevant overseas experience.

5. The Taskforce is finalising the HK Code. Upon completion of the drafting work, DH will consult the trade and relevant stakeholders on the implementation details including the monitoring mechanism for the HK Code. Depending on the responses by the trade to the HK Code, the Government may consider the need for stepping up regulation by way of enacting specific legislation.

Implementation of the International Code of Marketing of Breastmilk Substitutes in the United Kingdom

6. The United Kingdom (UK) has enacted the Infant Formula and Follow-on Formula (England) Regulations 2007 for limited application of the International Code of Marketing of Breastmilk Substitutes, one of the aims is to ensure that the rules on composition, labelling and advertising are in line with the principles and aims of the International Code of Marketing of Breastmilk

Substitutes.¹ According to the Scientific Advisory Committee on Nutrition (SACN)² of UK, the "Infant Formula and Follow-on Formula (England) Regulations 2007" do not give effect to the International Code of Marketing of Breastmilk Substitutes and subsequent resolutions of World Health Assembly as:-

- (i) the Regulations refer only to infant and follow-on formula. Other products marketed to infants (for example drinks) are not included;
- (ii) the Regulations do not allow promotion of infant formula, but allow for follow-on formula. SACN commented that infant formula and follow-on formula should be subjected to the same marketing restrictions;
- (iii) the Regulations should also ensure that infant formula and follow-on formula are clearly distinguishable to consumers who are currently confused by similarity of labelling and package design;
- (iv) free samples do not appear to be adequately proscribed by the Regulations;
- (v) SACN commented that labelling infant formula or follow-on formula with health or nutrition claims was unsupportable; and,
- (vi) the term "advertising" was too narrow and had to include promotion and other marketing communications.

Yours sincerely,



(Estrella CHEUNG)
for Secretary for Food and Health

cc.
DH (Attn: Dr. Shirley LEUNG)

¹ Reference: Explanatory Memorandum to the Infant Formula and Follow-on Formula (England) Regulations 2007 No. 3521. (website: <http://www.legislation.gov.uk/uksi/2007/3521/memorandum/contents> accessed on 11 May 2012)

² The Scientific Advisory Committee on Nutrition (SACN) is an advisory Committee of independent experts that provides advice to the Department of Health of United Kingdom (UK) as well as other government agencies and Departments in UK.