

**Submission to the Legislative Council Panel on Food Safety and  
Environmental Hygiene and Panel on Health Services  
Regarding  
Hong Kong Code of Marketing and Quality of Formula Milk and Related  
Products, and Food Products for Infants & Young Children**

**The Hong Kong Infant and Young Child Nutrition Association (The Association) supports the Government's objective to promote, protect and support breastfeeding in Hong Kong, but would not be able to support the draft Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children (Hong Kong Code) in its current form.**

The Association believes the draft Code is NOT in the best interest of Hong Kong infants and young children as well as mothers.

Association members, who represent the leading companies in our industry in Hong Kong, are committed to selling high-quality products in a manner that is responsible and in full compliance with applicable regulations and codes and this is demonstrated by the actions of our members each and every day.

Let us make it very clear, our organization and our members are fully supportive of breastfeeding as the best and most natural means to ensure normal health and development of infants during at least the first 6 months of life. We are committed to adhering to the principles of the World Health Organization Code of Marketing of Breast-milk Substitutes.

The Association has the following significant concerns with respect to the draft Hong Kong Code and feels obliged to put forth its position and recommendations as follows:

- 1 The Marketing code and labeling and quality standards should be addressed separately in order to ensure that consumers benefit from the best international approaches and all stakeholders should be given the time they need to present their views on the draft Code**
  - 1.1 The draft Hong Kong Code combines marketing practices, labeling and the quality standards into one voluntary code. There is no country in the world that does this and we do not encourage such a practice;
  - 1.2 Separation of the two initiatives allows each to go through an appropriate development process that allows input of all key relevant stakeholders and provides Hong Kong consumers with a system that meets international standards;

**2 A legislative path is essential for labelling and quality standards if the interests of consumers are to be protected by access to products of the highest quality and safety**

- 2.1 The issue of product labeling and quality is far too important to be left to voluntary compliance and it requires very clear guidelines to support the interests of consumers and also manufacturers. As such, legislation on product labeling and quality would offer consumers the certainty they expect when they purchase infant formula and the clarity manufacturers need in ensuring compliance with Hong Kong regulations;
- 2.2 In order to fill in the current gap that Hong Kong's current food nutrition labeling scheme does not cover food for children under 36 months, the Association urges the government to speed up the development of legislation to regulate labeling and composition of infants and young children up to 36 months;
- 2.3 The Association also believes there has been some confusion in development of the voluntary code. Labeling and quality standards development should follow a rigorous scientific evidence based process with the aim of protecting consumers accomplished in all countries through regulation;
- 2.4 Product quality and safety are one of the most critical elements for formulas and foods for infants and young children. CODEX Alimentarius, EU and US Code of Federal Regulation similarly lay down the provisions for quality and safety;
- 2.5 These facts reinforce that labeling and quality standards should be regulated by legislation and not by a voluntary code;

**3 Any regulation of marketing of infant formula should follow the WHO Code of Marketing of Breastmilk Substitutes and global best practices, which confine such regulation to infants up to 6 months in age, and should be adopted as legislation**

- 3.1 The restrictions in the draft Code would take away the opportunity for mothers with children over the age of six months to get the product-specific information they require to make educated decisions about which infant formula products are best suited to their needs;
- 3.2 Considering the practices in developed countries with similar economic characteristics to Hong Kong, and the WHO Code of Marketing of Breastmilk Substitutes, the Association believes marketing practices in Hong Kong should be governed through legislation for breastmilk substitutes for infants aged up to 6 months;



- 3.3 There is no scientific evidence to show promotion on food for children 6 months or above has affected the breastfeeding rates and its duration. Any biased, over-regulation in infant formula marketing will be contrary to Hong Kong's open free market economy and damaging to the fundamental right of consumers to information and choices;
- 3.4 The draft Hong Kong Code will allow Hong Kong mothers to have unlimited information regarding junk food and the toys for young children that come with them, but no information at all about the more nutritious option of infant formula for children under 36 months which is the one of the best complimentary choices once they start weaning and be introduced to a vast array of other foods;

#### **4 Trademarks play an important role in enabling consumers to make informed choices**

- 4.1 The provision of the draft Code requiring the removal of registered or common law trademarks from labels impedes the use of an important commercial distinction. Trademarks are used to communicate product and brand names for a variety of purposes, including to differentiate between categories of the same brand. They reflect each company's proprietary investment in quality and research, both of which are important to preserving consumer expectations associated with a particular brand. These are helpful product indicators that protect consumers by helping them to differentiate associated products from competing goods;
- 4.2 Regulations that would disadvantage a particular trademark holder, including preventing the continuation of trademarks' use in their intended format, could be viewed as a "regulatory taking" of intellectual property rights, particularly in the absence of evidence proving that the regulation advances any compelling objective while also lacking any evidence that the speech in question is deceptive, misleading or otherwise undeserving of protection. As the current proposed provision does not meet a well-defined and significant public interest, it may open up the government to specific compensatory liabilities under law;
- 4.3 Use of trademarks is protected by the Paris Convention for the Protection of Intellectual Property and other international agreements administered by international organizations such as the World Intellectual Property Organization and the World Trade Organization;

#### **5 An integrated approach to promote breastfeeding is required**

- 5.1 HKIYCNA supports WHO's recommendation that breastmilk is ideal for infants and that exclusive breastfeeding should be encouraged for the first six months of life;



- 5.2 Academic studies and surveys have consistently demonstrated that short duration of breastfeeding is a result of having not enough breastmilk, poor health condition and short maternity leaves, i.e. the need to return to work shortly after giving birth. The high percentage of working mothers, long working hours and short mandatory maternity leave contribute to high initiation rate but short duration of breastfeeding;
- 5.3 In support of breastfeeding, HKIYCNA has introduced a transparent HKIYCNA Code of Practice for the Marketing of Infant Formula, which is consistent with international standards of other developed countries and includes enforcement mechanisms. The Code of Practice applies to all members represented by the HKIYCNA;
- 5.4 The Association believes Hong Kong needs an integrated approach to promote breastfeeding. For mothers who cannot breastfeed or need infant milk formula as a supplement, we feel obliged to provide appropriate information and advice to them in order to ensure that babies and infants receive the best nutrition. The Association welcomes public-private partnerships to disseminate information on infant and young child nutrition;

The draft Hong Kong Code was released on October 26 simultaneously for public and industry consultation until the end 2012, but the Association finds such consultation period too short, therefore not allowing full feedback from the public and the industry.

The Association encourages the public could share their views actively during the consultation period to ensure the Hong Kong Code is in the best interests of infants, young children and parents.

Hong Kong Infant and Young Child Nutrition Association  
19<sup>th</sup> November 2012

The Hong Kong Infant and Young Child Nutrition Association was established in May 2011 by the following founding members (in alphabetic order):

Abbott Laboratories Limited  
Danone Baby Nutrition (HK) Limited  
FrieslandCampina (Hong Kong) Limited  
Mead Johnson Nutrition (Hong Kong) Limited  
Nestle Hong Kong Limited  
Wyeth (Hong Kong) Holding Company Limited