

Clerk to Panel on Health Services
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By email: panel_hs@legco.gov.hk

April 7, 2017

Dear Sirs

Re: Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children

I am writing in response to the invitation for submission from the Panel on Health Services on the topic of the Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children (the “draft code”). I am a legal practitioner qualified to practice law in the State of Nevada, USA, Hong Kong and am also a P.R.C. law qualified.

Article 5.1 of the draft code provides that a manufacturer or distributor should not carry out any promotional activities involving formula milk and formula milk related products. Whilst the draft code is not binding, it will have an impact on both the manufacturers/distributors and users of formula milk.

Promotional activities are means for consumers to receive and manufacturers/distributors to give product information. By restricting promotional activities including legitimate advertising, the draft code would inevitably restrict consumers access to product information. How and whether promotional activities should be regulated depends on their nature and it should be a balancing exercise:

1. misleading promotional activities should have mostly been addressed by the Trade Descriptions Ordinance which has a wide reach to include any “*trade description which, though not false, is misleading, that is to say, likely to be taken for a trade description of a kind that would be false to a material degree*”. Increased enforcement under the said Ordinance would be the more effective approach for consumers’ protection against misleading advertisements.
2. promotional activities that are not caught under the said Ordinance but are somewhat inflated requires other more proportionate treatment given all promotional activities may involve certain degree of embellishment. So long as the information conveyed by such promotional activities is supported by scientific evidence, the acceptance of which should be a matter for consumers’ individual assessment particularly when Hong Kong residents are well educated on average. Over restricting such promotional activities would only hinder legitimate commercial activities in Hong Kong which is famed as the most economically free

market. If the Government is concerned about commercial information overflow, it is a matter for more effective public education via, for example, government sponsored advertisement, pre-natal workshop and post-natal assistance to balance the perceived "commercial influence."

As such, I am of the view that the draft code is not necessary and will have the effect of over-restricting a legitimate industry from properly disseminating product information to facilitate consumers to make informed choices.

Thank you for giving me the opportunity to express my views.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Hu Yimei', with a long horizontal flourish extending to the right.

Hu, Yimei