



Re: Proposed Regulatory Framework for Nutrition and Health Claims on  
Infant Formula, Follow-up Formula and Prepackaged Foods for Infants  
and Young Children Under the Age of 36 Months in Hong Kong

claims\_con  
@graduate.hku.hk to: sultation@f  
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17/4/2015 10:02

Sent by: @gmail.com

Dear Sir / Madam,

Please kindly refer to my attached documents in my views expressed in the discussion paper  
in the consultation.

Thank you.

Yours faithfully,



Chung Man Hong, Simon paper\_CFS\_170415.docx

Centre for Food Safety  
(Attn.: Risk Assessment Section)  
Food and Environmental Hygiene Department

**Re: Proposed Regulatory Framework for Nutrition and Health Claims on Infant  
Formula, Follow-up Formula and Prepackaged Foods for Infants and Young Children  
Under the Age of 36 Months in Hong Kong**

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**Background**

Referring to the public consultation, I am writing to express my opinion on the above captioned proposed regulation.

In regards to the public consultation document, the government has planned to regulate the formula products under 5 overarching principles. [1] The current marketing environment of the formula and complementary food in infants and toddlers has been gradually expanding. We believe the overarching principles can help to facilitate the balance of promoting breastfeed and freedom of trade. The principles are designated for providing scientific and genuine claim as the product. However, the legislative framework for this food labeling is far away from the societal public health good.

**Stance**

The marketing business in baby / young children milk or food has been overwhelming. Since the 2010 “the Hong Kong Code” regulation on these products, the marketing activities has been drilling across from the mass public to all other sectors around, e.g. healthcare professionals, mothers and related care-takers. This legislation has been trying to impose the accurate claim on the product. If this legislation is implemented, we believe that the efficacy for facilitating Hong Kong mothers breastfeed will be far from the objectives expected.

**Global public health perspectives**

The framework from World Health Organization, WHO in 1981: International code of marketing stated that, “No advertising of breast-milk substitutes and no other promotions of products, ie, no product displays, posters or promotional materials”. [2]

In such, this legislation marked the line only up to the standard of “claims” in the advertising industry. It has been far away from the originality for the law. The significance of NO marketing, rather than “tailored” claimed marketing, is because of minimization of undesirable negative impact on exclusive breast feeding. Concrete evidence shows that, advertising directly to the consumer and other kinds of marketing, will greatly influence mothers and families in their decisions to take on “how to feed their infants / toddlers”. [3]

Even for the labeling, the code has already stated to “state the superiority of breastfeeding and [give] a warning about health hazards. The code has not been stating any kinds of “restricted claims” for the advertising act.

### **Rationale for NO marketing**

Globally, the breast milk substitutes companies are finding their ways to “escape” from the restrictions to promote their brands. In Hong Kong, the advertising for milk has now been shifted to icons and ideologies, showing mothers and children, without touching the arena of any contents, nutrients and its benefits. This iconization by associating the audiences with the happiness, healthiness to their brand, is now becoming a trend. In another way round, those companies will promote among key opinion leaders around the mothers and families, e.g. healthcare professionals, young children care-takers, mothers associations etc. Thus, such legislation cannot restrict the above marketing activities, which is violating the WHO International code of marketing.

### **Experience in Australia**

The experience in Australia for such escaping “loophole” in marketing has been clearly observed. In an Australian public health study, even no infant formula advertising is allowed, the breast milk substitutes advertising has been increasing greatly. [4] This causes the short duration of breastfeeding in Australia. In 2010, only 42% of infants between 6 to 12 months received any breast milk, and even lower in toddlers (19 to 24 months) for only 7%. [5] The negative impact on breastfeeding from this cross-marketing in follow-on / toddlers’ formula is obvious.

Another study in Australia has shown that, advertising in toddlers milk is providing a disguise in association of infant formula. Research revealed that, 66.8% of the respondents reported for seeing an advertisement for infant formula: with those

who had only seen non-retail advertising, more than twice as likely to believe that they had seen such an advertisement as those who had only seen retail advertising. [6]. That means, toddlers milk advertisement has in defacto infant formula advertising effect. Public are prone to recognize the salience of the brand via logo / colour / packaing. Thus, the claims for nutrients or labeling context are only small portion in their mindshare.

Research in neuroeconomics highlighted, how marketing might take advantage of normal neurological processes to increase likelihood of consumer 'mistakes'. [7] Such marketing techniques are trying to manipulate choice contexts, so as to increase time pressures or stress, then they try to influence their audience on the emphasis to various product attributes in consumer decision-making.

### **Involved interests and considerations**

The regulatory framework in this consultation is based on the Codex Alimentarius Commission ("Codex") in 1963 by Food and Agriculture Organization of the United Nations and WHO. This codex provides a standard for nutrition claims and health claims for the formula milk and the infants & young children food. There are concerns raised from the business parties, stating that the regulation is violating the freedom of choices for the consumers.

Government should take note on these issues and illustrate the difference of "Freedom of choice" and "Access to the information" [8]. Under the restrictive approach, the disallowed claims in all formula milk may impose the boundary for the information provided by the suppliers and their businesses partners. However, the access of information is not restricted to any individuals for their freedom to choose, to gather or compare the information they need. The ethics of public health regulatory framework should not be overwhelmed by the loosen approach in marketing regulation.

Moreover, in terms of pragmatic execution, the inclusive approach will cause the ambiguities. Australian experiences tell us that public are prone to distinguish the advertising from foods and formula milk, the inclusive approach can be foreseeing that the claims will be still adopted, and the purpose of protecting breastfed will not be fulfilled firmly. For the nutrient claims and functional claims, there will be causing a lot of contextual controversies raised by the businesses parties, which will also cause the government more utilization of public resources to reconcile the tactical

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applications from the parties. Thus, inclusive approach is not a desirable approach to adopt in the legislative framework.

### **The bottom line**

We urge the government to take this opportunity to restate the overarching principles. The legislation should follow on the WHO International Code. Those 3 decades codes are still valid and demonstrating significance. The marketing ban should be carried forward to enhance more exclusive breastfeeding and supporting toddlers in feeding. Instead of constructing a mechanism of approving the claims, the basis of NO marketing in these breast-milk substitutes, are more essential than restricting them only by wordings.

We suggest the government to make a wider perspective, not just in a particular "food labeling issue"; but this issue of breastfeed should be in a more comprehensive way by supporting mothers and nurturing an environment for minimizing the negative impact on breast-milk substitutes marketing.

Best regards,

Chung Man Hong, Simon (鍾汶康)

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