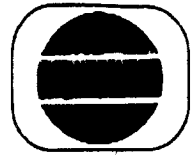


Television Broadcasts Limited

電視廣播有限公司



Desmond S. H. Chan 陳樹鴻
Assistant General Manager
助理總經理

17 April 2015

Centre for Food Safety
(Attn.: Risk Assessment Section)
Food and Environmental Hygiene Department
43/F, Queensway Government Offices
66 Queensway,
Hong Kong

BY FACSIMILE (2893-3547) AND BY POST

Dear Sirs,

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

We refer to the Consultation Document on the captioned matter published in January 2015, and are pleased to attach our submission for your consideration.

Yours faithfully,
Television Broadcasts Limited

Desmond S.H. Chan

Encl.

**SUBMISSION FROM TELEVISION BROADCASTS LIMITED IN RESPONSE TO
THE CONSULTATION DOCUMENT ON THE PROPOSED REGULATORY
FRAMEWORK ON NUTRITION AND HEALTH CLAIMS ON INFANT FORMULA,
FOLLOW-UP FORMULA AND PREPACKAGED FOODS FOR INFANTS AND
YOUNG CHILDREN UNDER THE AGE OF 36 MONTHS**

1. Television Broadcasts Limited (“TVB”) supports breastfeeding and welcomes the Government’s initiative to promote and protect breastfeeding.
2. However, we are of the view that the allegedly low breastfeeding rate in Hong Kong is not due to advertisements or promotions of formula products.

Reasons for weaning in Hong Kong

3. Local studies show that over 85% of new mothers in Hong Kong initiated breastfeeding on discharge from hospitals¹ and that 68.6% of mothers have breastfed their babies in the first month after birth². These new mothers had been exposed to promotions and advertisements of formula products before giving birth to their babies, but they still made a choice to breastfeed their babies. This clearly demonstrates that most new mothers in Hong Kong are well aware that breastfeeding is the best for their babies and are not influenced by advertisements. It is just that there are other personal and social factors that deter mothers in Hong Kong from continuing breastfeeding.
4. In a survey conducted in 2012³, over 50% of parents objected to the view that promotions and advertisements of milk formula for 6-36 months was the root cause of the low breastfeeding rate in Hong Kong.
5. Situations in other countries show no correlation between breastfeeding rates and scope of advertising restrictions. For instance, UK and Singapore have wider scope of restrictions in terms of advertising of formula products than Hong Kong and yet when comparing to Hong

¹ “World Breastfeeding Week 2013 Celebration Event Survey reveals over 85% of mothers breastfeed while conditions facilitating exclusive breastfeeding needed to be improved,” *Hong Kong Committee for UNICEF*, July 27, 2013, <http://www.unicef.org.hk/news-media/unicef-news/news/853/World-Breastfeeding-Week-2013section-news> (accessed March 19, 2015).

² “Optimising Breastfeeding Practices: A Link to Life Long Health,” *Centre for Health Protection of the Department of Health*, February 2014, http://www.chp.gov.hk/files/pdf/ncd_watch_feb2014.pdf (accessed March 19, 2015).

³ “Survey on Parents’ Views about the Draft HK Code,” *the Public Opinion Programme of the University of Hong Kong (HKUPOP)*, December 2012, <http://a2012.hkupop.hku.hk/english/report/formulaMilk/index.html> (accessed March 19, 2015).

Kong, UK has lower overall breastfeeding rates and Singapore has lower exclusive breastfeeding rate in the first 6 months of life⁴.

6. Unequivocally, the primary reasons for weaning in Hong Kong are lack of baby care facilities, short maternity leave, lack of proper education and support. Prohibiting or further restricting advertising of formula products will not help to resolve these social and structural issues and increase breastfeeding rate.

“Restrictive approach” is not advisable

7. We believe that the “restrictive approach” cannot really promote breastfeeding. Rather it has various negative effects.
8. The “restrictive approach” will deprive parents and care-givers of their right to access information on nutrient content and physiological role of the nutrients, which can be useful to assist them in making better-informed purchasing decisions if such information is scientifically substantiated, appropriate and expressed in a clear and non-misleading manner. After all, parents who cannot breastfeed or who choose to formula feed their babies deserve the same support, respect and care from the community as breastfeeding parents.
9. The absence of nutrition or health claims may also cause some parents and care-givers to purchase other processed food that are not adapted to the specific nutritional needs of infants and young children, thereby hazarding their health.
10. Unlike tobacco products, milk formula is not hazardous to health. In fact, infant formula is the only product specifically formulated to fulfil the nutritional needs of an infant where breastfeeding is not feasible. The formula industry is entitled to the right to legally promote these legitimate products, and their freedom of commercial speech and expression shall not be impeded upon.
11. Over-regulation and unnecessary government interference with promotion and marketing of legitimate products will jeopardize Hong Kong’s competitiveness in the region and discourage reputable market players from investing and operating in Hong Kong.

⁴ Optimising Breastfeeding Practices: A Link to Life Long Health,” *Centre for Health Protection of the Department of Health*, February 2014, http://www.chp.gov.hk/files/pdf/ncd_watch_feb2014.pdf (accessed March 19, 2015).

More appropriate to adopt “inclusive approach”

12. We opine that it is more appropriate for the Government to adopt the “inclusive approach” to regulate nutrition claims and health claims on formula products.
13. Such approach not only enables parents and care-givers to make an informed choice by providing accurate, scientifically substantiated and consistent information, but also offers an incentive to the formula industry to continue to invest in researches and consistently improve their products.
14. Factual science-based claims assist medical practitioners or health care professionals to understand the exact nature and characteristics of a product when they advise their clients about details of nutrient content in formula products.
15. The inclusive approach also makes the proposed regulatory scheme clearer and easier for the advertising and media industry to comply with the regulations.
16. Many developed countries (e.g. EU, Mainland China and Singapore) adopt an approach that permits claims with scientific substantiation and assessment on formula products above 6 months old. We suggest the Government make reference to the developed regulatory frameworks in these countries, rather than adopting the “restrictive approach” and prohibiting all claims up to 36 months old.

Things to note: “devil is in the details”

17. In principle, we support the five overarching principles and the proposal to regulate by way of legislation.
18. However, we are particularly concerned about the lack of clarity in the proposed regulatory scheme. For example, the consultation document does not clearly define each kind of claims and products that will be regulated. It remains unclear as to whether a breach or non-compliance may amount to a criminal offence and result in fine and/or imprisonment. The law must rectify this vagueness, so that businesses can understand what they can and cannot do.
19. Unlike other players in the advertising and media industry, TV and radio licensees are already subject to regulation and sanction for breach under the Codes of Practice issued by

the Communications Authority, hence careful thought needs to be given to the drafting of the legislation to avoid double-jeopardy against the licensees.

20. Given the convergence of telecommunications, broadcasting and information technologies, it is important that the proposed regulatory scheme be applied across all media, including Internet, on a non-discriminatory basis in order to ensure fair and effective implementation of the proposed regulation.
21. In light of paragraphs 18-20 above, before moving towards legislation, the Administration needs to conduct another public consultation to nail down the regulatory details, such as definitions, enforcement mechanisms, penalties, defences, exemptions, etc.
22. For reasons set out in paragraph 11 above, manufacturers and distributors of formula products may move businesses from Hong Kong to areas with less stringent regulations (e.g. Macau). This will pose significant negative impacts on the labour market, the supply of formula products and the overall economy and competitiveness of Hong Kong. We urge the Government to conduct a thorough business impact assessment to evaluate the implications of the proposed regulation scheme before drafting the legislation.

Conclusion

23. To effectively promote breastfeeding in Hong Kong, the Government needs to address the root causes by mandatory provision of breastfeeding facilities in public areas and workplace, lengthening of maternity leave, mandatory provision of break time for nursing mothers at work, and strengthening public education on breastfeeding.
24. The “restrictive approach” simply scapegoats the advertising and media industry. It cannot help promote breastfeeding.
25. Depending on the details of the proposed regulatory scheme, the “inclusive approach” may rightly balance the interests of different stakeholders. TVB looks forward to commenting on the proposed regulatory details.

Television Broadcasts Limited

April 17, 2015