LEGAL MEASURES CONCERNING MARKETING OF 
BREAST-MILK SUBSTITUTEs IN THAILAND 

BY 

MS. JAREEWAN RITTITAK 

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF 
THE REQUIREMENTS FOR THE DEGREE OF MASTER OF 
LAWS IN BUSINESS LAWS (ENGLISH PROGRAM) 
FACULTY OF LAW 
THAMMASAT UNIVERSITY 
ACADEMIC YEAR 2016 
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THESIS

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ENTITLED

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was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)

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It is widely accept that mother’s breastfeeding is one of the best ways to ensure child health growth and survival. WHO and UNICEF recommended that “mothers worldwide should exclusively breastfeed their infants for first six months to achieve optimal growth, development and health. Thereafter, they should be given nutritious complementary foods and continue breastfeeding up to the age of two years or beyond.”

Even though we have known numerous benefits of breast milk for infants and young children, however the rate of breastfeeding are low, one among factors that causes to the declination of breastfeeding is marketing of breast-milk substitutes. Breast-milk substitutes are marketed directly to consumer via mass media and advertisement and indirectly via incentives, free samples, donation of formula, promotional gifted to new mothers and gifted given to health workers. The design, packaging and labeling of milk for older children, milk for mother and related products are packed and designed to look closely resemble with breast-milk substitutes and promoted in ways that cross-promote its formula product. This leads to confusions as the purpose of the product. The promotion of breast-milk substitutes and marketing influences and induce mother to believe that breast-milk substitutes is equivalent or better than to human breast-milk and finally decide to stop breastfeeding.

In 1981, ‘The International Code of Marketing of Breast-milk Substitutes’ was developed and adopted by WHO and UNICEF as a ‘minimum standard’ to help protect and promote breastfeeding and to ensure breast-milk substitutes are used safely when necessary. Furthermore, in 2016 WHA 69th has adopted the ‘Guidance on Ending
the Inappropriate Promotion of Foods for Infants and Young Children’ which aims to promote, protect and support breastfeeding, prevent obesity and non-communicable disease, promote healthy diets, and ensure that caregivers receive clear and accurate information on feeding.

In Thailand, the directly regulation controlling the marketing of breast-milk substitute is the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008. However, this regulation is not legislative or statutory law that can be enforced against the marketing of breast-milk substitutes. In addition, the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revision (No.2) B.E.2555 (2012) under the Food Act B.E.2522 laid down prohibitions related to advertisement. However, the announcement and its revision can restrict only an advertisement of food for infant and young children. As a result, those prohibitions do not cover the promotion and marketing instrument.

In order to comply with the International Code of Marketing of Breast-milk Substitutes, the Ministry of Public Health has been pushing forward the drafts of “Legal Control of Marketing of Food for Infant and Young Children” into the national legislation to improve the measures to control the marketing of breast-milk substitutes. Currently, there are two drafts regarding the Department of Health and the Council of State no.1087/2559.

Thus, this thesis aims to study the situation and the current legal measure in Thailand concerning the marketing, advertising and labelling of breast-milk substitutes, including both of the drafts of legal control of marketing of food for infant and young children. Simultaneously, the thesis also studies the International Code of Marketing of Breast-milk Substitutes as the minimum requirement for all governments and the foreign law of the European Union, the United Kingdom and the Philippines in order to compare and seek appropriate legal measures to control the marketing of breast-milk substitutes in Thailand.

**Keywords:** Breast-milk substitute, Breastfeeding, Marketing of Breast-milk substitute, Marketing, Promotion, Advertising
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List of Abbreviation

AMA    American Marketing Association  
GNI    Global Gross National income  
IBFAN International Baby Food Action Network  
IHPP International Health Public Policy  
PNMA Pediatric Nutrition Manufacturer Association  
UNICEF United Nations Children's Fund  
WHA World Health Assembly  
WHO World Health Organization
CHAPTER 1
INTRODUCTION

1.1 Background and Problems

Before the development of breast-milk substitutes in the late 1860s, breast milk was the primary source of nourishment for infants and young children.¹ Mother’s breastfeeding is one of the best ways to ensure child health growth and survival. Breast milk is not only the source of essential nutrients to children’s development but also it is safe and economical. World Health Organization (WHO) describes that “Breast milk gives infants the nutrients they need for healthy development, including the antibodies that help protect them from common childhood illnesses such as diarrhea and pneumonia, the two primary causes of child mortality worldwide.”² Consequently, breastfeeding is also related to children’s health condition. In addition to babies, the United Nations Children's Fund (UNICEF) notifies that “Adults who were breastfed as babies often have lower blood pressure and lower cholesterol, as well as lower rates of overweight, obesity and type-2 diabetes.”³

In 2013, UNICEF reported that “about 1.5 million babies die every year because of not being breastfed. Many more millions were suffered from infectious diseases and malnutrition, never reaching their full potential because they were bottle fed.”⁴

In Thailand, it is interesting to note that only around 12 per cent of mothers exclusively breastfeed their babies for the first six months as recommended by WHO

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and UNICEF. This statistic shows that exclusive breastfeeding rate in Thailand is among the lowest in the world.”

In relation to a health condition, breastfeeding has the valuable advantages to not only children but also mothers. According to the report of WHO, it informs that “Breastfeeding has the potential to prevent about 800,000 deaths among children under five years old each year if all children 0–23 months were optimally breastfed.” To clarify, this means 11.6% of all deaths amongst children less than five years old could be prevented by breastfeeding. Likewise, this statistic conforms to “the Lancet breastfeeding series” (Lancet) published in 2016. With reference to the Lancet, it provides evidence that the increasing of breastfeeding could save over 820,000 children a year and prevent extra 20,000 deaths from breast cancer each year as well as it may reduce the risk of ovarian cancer.

With regard to the WHO’s recommendation, it suggests that it is crucial to infants to be exclusively breastfed for the first six months of life to achieve optimal growth, development and health. In addition, mothers should continue to breastfeed their children beyond the age of six months until they are two years of age or older. Simultaneously, safe and appropriate complementary foods are also essential to provide children to meet their evolving nutritional requirements.

Even though we have known numerous benefits of breast milk for infants and young children, the advertising and promotion of breast-milk substitutes and their use led to a decline in breastfeeding rates in developed countries. Over the following

5 ibid
6 World Health Organization (n 2).
100 years, the breastfeeding rates have been decreasing from over 70% in the 1930s to 14% in the 1970s.\textsuperscript{9}

In light of the use of animal's milk for infant feeding, it is noted as far back as 2000 BC. Since then, alternative milk sources have evolved to include the synthetic formulas until nowadays. The use of artificial feeding substances grew rapidly and was significantly influenced by advertising campaigns. Consequently, this had a profound negative effect on breastfeeding trends, despite research that revealed many discrepancies between breastfed and artificially fed infants.\textsuperscript{10}

The Lancet concludes that the world economy loses about 0.49 per cent of Global Gross National income (GNI) or amount of $300 billion for breast-milk substitute products. Besides, International Health Public Policy Research (IHPP) informs that exclusive breastfeeding for the first 6 months of infants’ age, Thai family can save an amount of 1.8 billion baht per year in Thailand.\textsuperscript{11}

With regard to the advertisement, the evidence shows that advertising directly affects consumers and other marketing techniques have influence on mothers and families over their decisions-making on how to feed their infants and young children.\textsuperscript{12} Furthermore, an aggressive marketing of formulas in developing countries contributed to a global decline in breastfeeding.\textsuperscript{13} Currently, many believe that the development and advertisement of infant formula have once again negatively impacted

\textsuperscript{11} International Health Public Policy Research, ‘Acknowledgement of breastfeeding and infant formula advertisement with the attitude and decision to breastfeed of mother and her relatives’ <http://ihppthaigov.net/DB/publication/attachresearch/325/chapter1.pdf/> accessed 18 October 2015
\textsuperscript{12} World Health Organization (n 2).
the practice of breastfeeding. Despite the fact that breastfeeding rate was 90% in the 20th century, it has decreased to approximately 42% in the 21st century.\textsuperscript{14}

In order to protect a public from inappropriate marketing strategies and promote breastfeeding, the WHA adopted the International Code of Marketing of Breast-milk Substitutes (International Code)\textsuperscript{15} in 1981. With reference to the International Code, the provision of adequate information on appropriate infant feeding and the regulation of the marketing of breast-milk substitutes, bottles and teats are prescribed. In subsequent years, additional resolutions have been defined and strengthened the International Code.

Accordingly, manufacturers and distributors of breast-milk substitutes have to comply with the International Code of Marketing of Breast-milk Substitutes even if the country has not incorporated the International Code of Marketing of Breast-milk Substitutes into a national policy or legislation. The aggressive marketing of breast-milk substitutes that violates the International Code of Marketing of Breast-milk Substitutes continues to undermine a breastfeeding and contribute to infant and young child morbidity and mortality. Furthermore, in order to control the inappropriate promotion of food for infants and young children including to breast-milk substitute product, the WHA provides the Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children. This guidance clarifies the inclusion of certain products which are supposed to be covered by the International Code and subsequent resolutions in 2016. In light of recommendations, the guidance suggests to end the inappropriate promotion of foods for infants and young children from 6-36 months of age.\textsuperscript{16}

Although, the International Code of Marketing of Breast-milk Substitutes was adopted for more than 30 years, but it has been weakly enforced by countries.

\textsuperscript{14} Wickes, ‘A history of infant feeding. Part IV. Nineteenth century’ (1953) continued. Archives of Disease in Childhood 416
According to the global sales of breast-milk substitutes, the total value is US$ 44.8 billion per year and expected to rise to US$ 70.6 billion by 2019. Likewise, the market value of breast-milk substitutes in Thailand is 25 billion Baht. As a result, the aggressive marketing of breast-milk substitutes has been undermining efforts to improve breastfeeding rates.

To date, 135 countries had at least some of legal measures in place covering some provisions of the International Code. A total of 39 countries have comprehensive legislation or other legal measures reflecting all or most provisions of the International Code. In relation to Thailand, it complies with the International Code of Marketing of Breast-milk Substitutes voluntarily through the adoption of all or most of the provisions of the International Code of Marketing of Breast-milk Substitutes by non-binding measures.

The information of the UNICEF conforms to the survey outcome by National Statistical of Thailand which shows that only 12% of Thai infants under 6 months of age were breastfed, while 61.8% were fed by breast-milk substitutes.

In Thailand, breast-milk substitutes are marketed both directly and indirectly. On one hand, consumers are aware the marketing of breast-milk substitutes via mass media and advertisement. On the other hand, free suppliers and promotions to and through health workers and facilities, retailer or policy maker indirectly influence consumers. In

19 WHO.UNICEF.IBFAN (n 17).
20 World Health Organization (n 2).
21 นงนุช ใจชื่น และคณะ. ผลกระทบของการส่งเสริมการตลาดนมผงต่อ มายาคติ ทัศนคติ และพฤติกรรมของการเลี้ยงลูกด้วยนมผงของหญิงไทย. โครงการวิจัยและสนับสนุนการส่งเสริมการเปลี่ยนลูกดื่นมม, ส้านักงานพัฒนานโยบายสุขภาพระหว่างประเทศ, 2558 (Nongnuch Jaichuen and Kannaphon Phakdeesethakun. 'Impacts of marketing communications on Thai women’s breast-milk substitute myth, attitude, and behavior.' International Health Policy Program, (2015)
addition, internet marketing on company websites including social media or via mobile applications is also linked to consumers’ awareness. Therefore, the marketing influences social norms by creating extensive, modern and comparable images of breast-milk substitutes instead of breast milk.22

Due to the research of the IHPP, it has showed that “The promotion of products influences people’s satisfaction and perception toward the formula milk feeding in infants.”23

There are 15 promotion strategies in the formula milk industry. However, the top strategies recognized by Thai women are the following three strategies:

1. Advertisement, especially, through television commercials, newspapers, magazines, and the internet;
2. Direct marketing through public relations by setting up booths in department stores, hospitals, and drug stores; and
3. Personal selling through suggestions by medical and public health personnel such as physicians, nurses, nutritionists, or public health officers.

According to this research, Thai women accepted that there are the following two promotion strategies which had impacts toward their decision-making to buy the formula milk. There are advertisement, especially, through television commercials (78.5%) and personal selling through suggestions by medical and public health personnel (50.8%)24

According to the report of the International Baby Food Action Network (IBFAN),25 it concluded that “Thailand has no national law protecting mothers, parents,

22 ibid.
23 ibid.
24 ibid.
and infants against the aggressive and unethical marketing of breast-milk substitutes, but has only a number of voluntary measures.”

Thailand obviously implements the regulation to be in accordance with the International Code of Marketing of Breast-milk Substitutes by enforcing the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008. However, this regulation is not legislative or statutory law that can be enforced against the marketing of breast-milk substitutes.

The Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revision (No.2) B.E.2555 (2012) under the Food Act B.E.2522 laid down prohibitions related to advertisements. According to prohibitions, there are various types of restricted products regarding modified milk, infant food, follow-up formula modified milk/infant food and young children, and special-purpose food intended to feed infants and young children. However, the announcement and its revision can restrict only an advertisement of food for infant and young children. As a result, those prohibitions do not cover the promotion and marketing instrument. This is the loophole of Thailand because there is no direct provisions to control the marketing of breast-milk substitutes. Therefore, this is one of the main factors that obstructs breastfeeding and influences mothers to choose an infant formula. Since Thailand has no national legislation controlling the marketing of breast-milk substitutes, the question arises that what should Thailand do to follow the International Code of Marketing of Breast-milk Substitutes to reach the best protection and achieve the right measures.

In order to comply with the International Code, the Ministry of Public Health has been pushing forward the drafts of “Legal Control of Marketing of Food for Infant and Young Children” into the national legislation to improve the measures to control the marketing of breast-milk substitutes. Currently, there are two drafts regarding the Department of Health and the Council of State no.1087/2559.

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Thus, this thesis aims to study the situation which Thailand violates the International Code of Marketing of Breast-milk Substitutes and the current legal measure in Thailand concerning the marketing, advertising and labelling of breast-milk substitutes, including both of the drafts of legal control of marketing of food for infant and young children. Simultaneously, the thesis also studies the International Code of Marketing of Breast-milk Substitutes as the minimum requirement for all governments and the foreign law of the European Union, the United Kingdom and the Philippines in order to compare and seek appropriate legal measures to control the marketing of breast-milk substitutes in Thailand.

1.2 Objective of Study

1.2.1 To analyze the loophole of Thai law concerning the aggressive marketing of breast-milk substitutes.

1.2.2 To study and analyze the existing laws and regulations relating to the marketing of breast-milk substitute control.

1.2.3 To study the international measures which control an inappropriate marketing of breast-milk substitutes.

1.2.4 To study the foreign law measures to control the marketing of breast-milk substitute control.

1.3 Scope of study

This thesis focuses on the studies and methods to control the aggressive marketing of breast-milk substitutes in Thailand by improving the legal measures concerning the marketing under the scope as follows:

1.3.1 To study the result of having no national legislation to control the marketing of breast-milk substitutes in Thailand.

1.3.2 To study the current law or regulations controlling the advertising of food, label, promotion and variety of marketing by breast-milk substitute manufactured.

1.3.3 To study and analyze the drafts of legal control of marketing of food for infants and young children in order to implement the International Code of Marketing of Breast-milk Substitutes against the violation of immoral promotion of breast-milk substitutes.
1.3.4 To study the laws of foreign country which are the European Union, the United Kingdom and the Philippines, in order to search for appropriate legal measures to control the marketing of breast-milk substitutes.

1.4 Methodology

This thesis is mainly based on documentary researches from the guidelines, textbooks, articles, journals, scholar’s opinions, information on the internet, government publications, international organizations’ recommendations that are relevant to the control of the marketing of breast-milk substitutes in both Thai and English languages, including Thai and foreign laws and regulations related to the marketing of breast-milk substitutes.

1.5 Expected Results

1.5.1 To understand the International Code of Marketing of Breast-milk Substitutes as a minimum standard, the Guidance on Ending an Inappropriate Promotion of Foods for Infants and Young Children including the foreign measure of controlling the marketing of breast-milk substitutes for developing an appropriate measures to control marketing of breast-milk substitutes in Thailand.

1.5.2 To understand the current legislations which control the marketing of breast-milk substitutes and compare them to the international standards and foreign countries’ measures in order to adapt it with the aggressive marketing of breast-milk substitutes in Thailand.

1.5.3 To understand the drafts of legal control of marketing of foods for infants and young children whether it is appropriate enough to control the marketing of breast-milk substitutes in Thailand.
CHAPTER 2
OVERVIEW OF MEASURES TO CONTROL THE MARKETING OF BREAST-MILK SUBSTITUTES

2.1 History of breastfeeding

The mother and infant’s breastfeed right are the basic right as a human to live, to reproduce, to adequate the best natural food. Every mother and child has the right to breastfeed. The word “Right to Breastfeed” means that outside community does not have the right to interfere the relationship of both the mother and child. However, others make the choices for them by luring their breast milk diets those are not diverse.

2.1.1 The right to breastfeed

The right to adequate the breast milk as the best food was reaffirmed in the binding international agreements. In the “International Covenant on Economic, Social and Cultural Rights”\(^ {27}\), which came into force in 1976, Article 11 state that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing..." and also recognizes "the fundamental right of everyone to be free from hunger..."\(^ {28}\)

The 1979 “Convention on the Elimination of all Forms of Discrimination against Women” (CEDAW)\(^ {29}\) is adopted by the UN General Assembly. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. This convention affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relationship. It affirms women's rights to acquire, change or retain their nationality of their children.

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\(^ {28}\) ibid.

Thailand have already ratified to this convention since 9 August 1985.  

In the “Convention on the Rights of the Child”, article 24 says that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health..." (paragraph 1) and “shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods, clean drinking water, and health care” (paragraph 2c).

The “UN's Committee on Economic, Social and Cultural Rights” has issued General Comment 12 in Twentieth session, 1999 about The Right to Adequate Food in Article 11 (General Comment 12 1999), interpreting the meaning of the human right to adequate food. It constitutes an authoritative contribution to international jurisprudence.

Further, several non-binding international declarations and resolutions helped to shape the emerging international consensus on the meaning of the human right to adequate food as it applies to children.

This was followed by several other international statements and agreements, for example, the WHO provides the “International Code of Marketing of Breast-milk Substitutes”, adopted in 1981, and subsequently clarified resolutions.

2.1.2 The consumer protection right

In the early 1960s, President John Kennedy identified four inherent consumer rights as follows:

The right to safety – to be protected against products and services that are hazardous to health and life.

The right to be informed – to be protected against fraudulent, deceitful, or misleading advertising or other information that could interfere with making an informed choice.

The right to choose – to have access to competitive products that are priced fairly and are of satisfactory quality.

The right to be heard – that consumer interests will be fully and fairly considered in the formulation and administration of government policy.

The General Assembly on behalf of the United Nations adopted the guideline for consumer protection by consensus. The guideline\(^\text{35}\), provide a framework for governments, particularly those of developing countries, to use in elaborating consumer protection policies and legislation.

One of these guidelines for consumer protection object is “to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers.”

The general principle of this guideline required the government to develop, strengthen or maintain a strong consumer protection policy.\(^\text{36}\)

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\(^\text{36}\) The legitimate needs which the guidelines are intended to meet are the following:

- (a) Access by consumers to essential goods and services;
- (b) The protection of vulnerable and disadvantaged consumers;
- (c) The protection of consumers from hazards to their health and safety;
- (d) The promotion and protection of the economic interests of consumers;
In the case of promotion and protection of the consumer’s economic interests under this guideline concerns with promotional marketing, sales practices, advertising and other marketing activities that provides the guideline, follow by:

1. Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.

2. Member States, in close collaboration with manufacturers, distributors and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulations and verification of environmental claims should be encouraged.

(e) Access by adequate information to the customer to enable them to make the choices according to individual needs;

(f) Consumer education, including education, environment, social and economic consequences of consumer choice;

(g) Availability of effective consumer dispute resolution and redress;

(h) Freedom of consumer’s form and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes that affect them;

(i) The promotion of sustainable consumption patterns;

(j) A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce;

(k) The protection of consumer privacy and the global free flow of information.
The Consumer Protection Act B.E.2522 stated about the consumer protection right in section 4 as follows:

1. The right to receive information correctly and sufficiently and to describe the quality of goods or services;
2. The right to expect safety in the use of goods or services;
3. The right to expect safety in the use of goods or services;
   (3bis) the right to receive a fair contact
4. The right to have the injury consideration and compensate in accordance with the laws on such matters or with the provision of this Act.

Following to the Consumer Bill of Right by John Kennedy and the Guideline of the United Nations, among an unethical marketing, the pregnant women, mothers and her families on behalf of consumers are being in the sensible situation. Women, in turn, have the right to proper nutrition, to decide how to feed their children above pressure from breast-milk substitute producers and distributors through advertising or any other form of promotion, and to full information and appropriate conditions that is enable them for their decisions. They have the right to be protected against fraudulent, deceitful, or misleading advertising.\(^{37}\) Other information could interfere with making an informed choice, to be informed the adequate information about the product and service to enable them to make an informed choices according to individual wishes and needs.\(^{38}\)

While children as a human have the right to adequate nutrition and access to save and nutritious food, both are essential for fulfilling their right to the highest attainable standard of health.\(^{39}\)

2.2 The history of infant formula and measures to control the marketing of breast-milk substitutes

An aggressive marketing is an important factor that induces customers to choose breast-milk substitutes instead of feeding their infant by human breast milk.

\(^{37}\) The Consumer Bill of Right.


\(^{39}\) World Health Organization and United Nations Children's Fund (n 8).
Although, the manufacturer knows about that quality of breast-milk substitute product cannot replaces breastfeed to an infant, but the large amount of profit from selling an infant formula products with lower investment, they still continually promote it.

In this topic, the author will describe the infant formula development, the effect of aggressive marketing to infant, and the measures to control the marketing of breast-milk substitute.

### 2.2.1 Infant formula development

As far back as 2000 BC, the use of animal's milk for infant feeding substances grew rapidly and was significantly influenced by advertising campaigns. This had a profound negative effect on breastfeeding trends, despite research that revealed many discrepancies between breastfed and artificially fed infants.\(^{40}\)

In 1867, “Justus von Liebig developed the world’s first commercial infant formula, Liebig’s soluble food for babies, which was sold in London by the Liebig’s registered concentrated milk company. Although, Liebig did not challenge the obvious fact that mother’s milk was the perfect infant food, but he did claim that he had succeeded in concocting a substance whose chemical makeup was virtually identical to that of mother’s milk.”

The success of this product quickly gave rise to competitors there were 27 patented brands of infant food on the market.\(^ {41}\)

In the same duration, “the Swiss Merchant Henri Nestle invented the first artificial infant food, and in 1873, 500,000 boxes of Nestle's milk food were sold in the United States as well as in Europe, Argentina, and the Dutch East Indies.”\(^ {42}\)

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In 1867, “Henri Nestle, a pharmacist created a milk food form crubs made from baked malted wheat rusks mixed with sweetened condensed milk. This granular brown powder was the first instant weaning food.”

In the late 1950s, “Alfred Bosworth released a reformulation and concentration of Similac (for “similar to lactation”), and Mead Johnson released Enfamil (for “infant meal”). Several other formulas were released over the next few decades, and along with extremely aggressive advertising campaigns with exaggerated claims of health benefits and complete nutrition, commercial formulas began to seriously compete with evaporated milk formulas. The overall popularity of formula began to soar in a social climate that increasingly viewed breastfeeding as “dirty” and “unclean”.”

In 1959 marketing “campaigns provided inexpensive formula to hospitals and pediatricians for endorsements and by the early 1960s, commercial formulas were more commonly used than evaporated milk formulas in the United States, which all but vanished in the 1970s.”

However, formula was still rightly used as an emergency food for babies that would otherwise starve. The foods were lacked valuable nutrients like protein, vitamins, and minerals.

The UNICEF estimated that “a formula-fed child living in disease-ridden and unhygienic conditions is up to 25 times more likely to die of diarrhea and four times more likely to die of pneumonia than a breastfed child.”

45 Gingi F (n 43).
After an estimated “1.2 million deaths directly related to formula feeding in third world countries, organized protests the most famous of which was the Nestlé boycott of 1977 called for an end to unethical marketing.”

The unethical spread of infant formula an emergency supplement being peddled as a “healthy” food choice resulted in the forming of the International Code of Marketing of Breast-milk Substitutes. Further, “aggressive marketing of formulas in developing countries contributed to a global decline in breastfeeding.”

The 34th WHA adopts WHA Resolution 34.22 which included the International Code of Marketing of Breast-milk Substitutes as a "minimum requirement” to be adopted “in its entirety.”

Currently, many people believed that the development and advertisement of infant formula has once again negatively impacted the practice of breastfeeding. Although the breastfeeding rate was 90% in the 20th century, it has decreased approximately 42% in the 21st century.

Information, provided during prenatal care, is extremely influential. It is documented both of advertising and provider attitudes influence women’s choice of infant-feeding methods.

2.2.2 Marketing

The International Code of Marketing of Breast-milk Substitutes aims to protect and promote breastfeeding. It ensures that the use of breast-milk substitutes are necessary on the basis of adequate information and through appropriate marketing.

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48 United Nations Children’s Fund (n 2).
and distribution. Thus, it necessary to understand the definition of marketing and its instruments.

### 2.2.2.1 Definition of marketing

The AMA defines that “marketing is the process and executive the conception, pricing, promotion and distribution of ideas, goods, and services to create exchanges that satisfy individual and organizational goals.”

Russ/Kirkpatrick defines that marketing is “the performance, by the seller, of various interrelated activities intended to bring about beneficial exchanges involving the seller’s market offering.”

A Chapman defines that “marketing also includes PR, online presence/activities, customer service, selling/sales admin (methods and structure/strategy), branding, exhibitions, sponsorship, new product development, merchandising, surveys and market research, political lobbying, and even extends to ethos, culture, training, and organizational constitutional issues, since all this affects the image and trading style of an organization or product/service provider.”

### 2.2.2.2 Marketing instrument

The marketing mix is the name given to the four most important jobs performed by marketing managers, consists of creating the product, pricing it, promoting it, and distributing it to the ultimate user.

1. Product is “the item actually being sold. The product must deliver a minimum level of performance; otherwise even the best work on the other elements of the marketing mix won't do any good.”

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55 "Marketing mix" is a general phrase used to describe the different kinds of choices organizations have to make in the whole process of bringing a product or service to market.
(2) Pricing is “the value that is put for a product. It depends on costs of production, segment targeted, ability of the market to pay, supply-demand and a host of other direct and indirect factors. There can be several types of pricing strategies, each tied in with an overall business plan. Pricing can also be used a demarcation, to differentiate and enhance the image of a product.”

(3) Place is “the value that is put for a product. It depends on costs of production, segment targeted, ability of the market to pay, supply-demand and a host of other direct and indirect factors. There can be several types of pricing strategies, each tied in with an overall business plan. Pricing can also be used a demarcation, to differentiate and enhance the image of a product.”

(4) Promotion is “all the activities undertaken to make the product or service known to the user and trade. This can include advertising, word of mouth, press reports, incentives, commissions and awards to the trade. It can also include consumer schemes, direct marketing, contests and prizes.”

Promotion is an important element in the marketing mixes. For the seller whose product, prices and distribution are closely similar to competitors that included the members of many great industries promotion. That may be the only means of differentiating products in the customer’s minds.

2.2.2.3 Marketing communication

To inform, persuade, and reminder targeted consumers effectively, marketers rely on one or more the five major elements of the marketing communications mix: salespeople, advertising, sale promotion tools, publicity and direct marketing. Every transmitting agent or channel, a salesperson, a television commercial, a press release, or skywriting, can make use of words.

(1) Advertising

Advertising is the one channel of promotional communication that is divided as an instrument of marketing mix. It is a form of

56 Russ/Kirkpatrick (n 53) 9.
57 William O (n 34) 416.
communication that creates audience awareness about goods, services and brands. Advertising has influence on the decision of individual and on the behavior of people in society.

The AMA defines “advertising” is “the placement of announcements and persuasive messages in time or space purchased in any of the mass media by business firms, nonprofit organizations, government agencies, and individuals who seek to inform and/or persuade members of a particular target market or audience about their products, services, organizations, or ideas.”

Russ/Kirkpatrick describe that “advertising is any paid from non-personal presentation and promotion of ideas, products, or services by and identified sponsor. Most advertising media are mass media: newspapers, magazines, television, radio, billboards, and transit. Thus rather transmitting messages to one buyer, most ads communicate to thousands or even millions of buyers; this makes each contact far less expensive than personal sales presentations.”

Advertising stimulates demand, helps build brand success, develops and shapes buyer behavior, and gives the seller a measure of certainty about the level of sales. In addition, it informs buyers about product characteristics and availability and makes markets more competitive.

Effective advertising can present information about new or existing products that demonstrated the meaningful of the product. Also establish or refresh the brand’s image. It can reach various audience with repeated communications, and gives company the opportunity to dramatize its products and services in a colourful way.

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58 American Marketing Association,
59 Russ/Kirkpatrick (n 53) 11.
Marketing is an extremely broad area, includes advertising. It can thus conclude that “advertising is a marketing communications element that is persuasive, non-personal, paid for an identified sponsor, and disseminated through mass channels of communication to promote the adoption of goods, services, persons, or idea.”  

(2) Public relations

Public relations functions can identify, establish and maintain mutually beneficial relationships between organization and the various publics on which its success or failure depends. Employee, customer, stockholders, community members, and the government are the examples of various publics for many firms.  

A key aspect of public relations is publicity. Publicity refers to non-paid for communications about the company or product that appears on some media forms, always in the news media. Since the firm cannot completely control message dissemination, publicity may generate more believable message than paid-for communications such as advertising.

(3) Personal selling

Personal selling involves face-to-face interactions between the seller and the buyer, to satisfy buyer’s needs and have the mutual benefit of both parties. Personal selling takes place through retail and direct-to-consumer channels. The personal nature of method distinguishes from non-personal forms of marketing communication. Personal selling allows immediate feedback, enabling a message to be tailored to fit the buyer’s individual needs.

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63 William O (n 34) 418.  
65 ibid.
Personal selling is an important communications when the product is complex. The sale of medical equipment to hospitals and physicians would be practically impossible without well-informed salespeople who can provide the necessary details to prospective buyers.

(4) Sales promotion 66

Like personal selling and advertising, sales promotion stimulates consumer buying and middlemen’s effectiveness, but with wide variety of means. Sales promotion tactics are expected to supplement salespeople and advertising to make them more effective. 67

Sales promotion includes communications activities that provide extra value or incentives to ultimate consumers, wholesalers, retailers, or other organizational, or purchase. Coupons samples, premiums, point-of-purchase displays, sweepstakes, contests, rebates, and trade show exhibits are all examples of sale promotion.

(5) Direct marketing communications 68

Direct marketing communications is a process of communicating directly with target customers to encourage response by telephone, mail, electronic means, or personal visit. Popular methods of direct marketing communications include telemarketing, direct mail, direct-response broadcast advertising, computer shopping services, cable television shopping network, infomercials, and in some instances, outdoor advertising.

Direct marketing communications are used by all types of marketers, including retailers, wholesalers, manufacturers, and service providers. A fast-growing segment of the marketing communications field, direct marketing often uses precise means of identifying members of a target audience and compiling

66 William O (n 34) 419.
67 Russ/Kirkpatrick. (n 53) 71.
68 William O (n 34) 420.
customer/prospect databases with address, telephone numbers, account numbers, or fax numbers to allow access to buyer.

The breast-milk substitutes marketer has adopted this direct marketing communication by induce mother and pregnancy women to register their private information including the phone number including an address in order to collect the database and continue contact with them in the future. They always contact with this customer, even if not direct introduce about their product.

2.3 International measures to control the marketing of breast-milk substitutes

As the author mentioned above, an aggressive marketing is one factor that induces the customer to pay for infant formula instead of feeding their infant the breast milk. Although, the manufacturer knows about a quality of breast-milk substitutes product that cannot replace, but according to a large amount of profit from selling an

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1. Products should not be advertised or otherwise promoted to the public.
2. Mothers and pregnant women and their families should not be given samples of products.
3. Health care providers should not be given free or subsidized supplies of products and must not promote products.
4. People responsible for marketing products should not try to directly contact mothers or pregnant women or their families.
5. The labels on products should not use words or pictures, including pictures of infants, to idealize the use of their products.
6. Health workers neither should not be offered the financial or material by manufactures or distributor, nor should not accept by health worker.
7. Health workers should not be given samples of products, except for professional evaluation or research at the institution level. And Health worker should not give samples of infant formula to pregnant women and mother of infant or their families.
8. Material for health workers should contain only scientific and factual information and must not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding.
9. All information and education materials for pregnant women and mothers, including labels, should explain the benefits and superiority of breastfeeding, the social and financial implications of its use, and the health hazards of the unnecessary or improper use of formula.
10. All products should be of a high quality and take account of the climate and storage conditions of the country where they are used.
infant formula product with the lower investment they still continually promote it. Thus, in order to control the marketing of breast-milk substitutes, promote, support and protect an infant from malnutrition, morbidity and mortality, many organization, the ratification of the conventions to support breastfeeding, the resolutions, the guidelines are launched.

2.3.1 International Code of Marketing of Breast-milk Substitutes and Subsequent WHA Resolutions

70 WHA resolution

1. WHA resolution 39.28 (1986) urges Member States to ensure that small amounts of breastmilk substitutes needed for the minority of infants are made available through normal procurement channels and not through free or subsidized supplies.

2. WHA resolution 39.28 (1986) calls on Member States to the following:

   2.1 Any food or drink given before complementary feeding is nutritionally required may interfere with breastfeeding and therefore should neither be promoted nor encouraged for use by infants during this period.

   2.2 Practice of providing infants with follow up milks is “not necessary”.

3. WHA resolution 54.2 (2001) advises exclusive breastfeeding for 6 months and continued breastfeeding for up to 2 years or beyond, which means that the recommended age for use of complementary foods cannot be under 6 months.

4. WHA resolution 58.32 (2005) calls on countries to ensure that financial support and other incentive for program and health workers do not create conflicts of interest.

5. WHA resolution 58.32 (2005) prohibits nutrition and health claims, unless specifically provided for in national legislation.

6. WHA 61.20 (2008) urges Member States to scale up efforts to monitor and enforce national measures and to avoid conflicts of interest and investigate the safe use of donor milk through human milk banks for vulnerable infants, mindful of national laws, cultural and religious beliefs.

7. WHA 63.23 (2010) urges Member States to develop and strengthen legislative and regulatory measures to control the marketing of breastmilk substitutes to give effect to the Code and resolutions, to end inappropriate promotion of foods for infants and young children and to ensure that claims not be permitted for foods for infants and young children and to ensure that required breastmilk substitutes in emergency responses are purchased and distributed according to strict criteria. This covers complementary foods and toddler or growing-up milk.

8. WHA 65.60 urges Member states to put into practice the comprehensive implementation plan on maternal, infant and young child nutrition, including: Developing or strengthening legislative, regulatory or other measures to control the marketing of breastmilk substitutes, establishing adequate
The infant formula industry has had a significant adverse impact on breastfeeding rates through strategic marketing, targeting women with direct advertising and with the implicit and explicit endorsement of health providers. Public health agencies, however, can and should work to counter this corporate influence by creative and aggressive breastfeeding promotion, utilizing the same channels that have been leveraged by formula manufacturers. So, the regulations of “International Code of Marketing of Breast-milk Substitutes” are regulated the manufacturer from unethical marketing.71

In 1981, WHA has adopted the “International Code of Marketing of Breast-milk Substitutes” and the Subsequent WHA Resolution which aims to protect both of infant and mothers who use breast-milk substitutes, who also have a right to accurate, independent information. It prohibits the manufacturer from advertising and seeking direct and indirect contact with pregnant women and the mothers of infants and young children. Moreover, companies are required to label products correctly and are limited to providing scientific and factual information to health workers.

The International Code of Marketing of Breast-milk Substitutes recognized that “inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in all countries and that improper practice in the marketing of breast-milk substitutes and related products can contribute to this major public health problem.”72 Further, this International Code of Marketing of Breast-milk Substitutes also recommends restrictions on the marketing of breast-milk substitutes to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.”73

mechanisms to safeguard against potential conflicts of interest in nutrition action.

72 World Health Organization (n 2).
73 International Code of Marketing of Breast-Milk Substitutes (n 15).
2.3.2 Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children\textsuperscript{74}

This guidance aims to promote, protect and support breastfeeding, prevent obesity and non-communicable disease, promote healthy diets, and ensure that caregivers receive clear and accurate information on feeding.\textsuperscript{75}

Under the scope of this guidance, the author will mention to the detail which relate to the marketing of breast-milk substitute control as follows:

2.3.2.1 The definition of promotion and cross promotion

This definition of promotion and cross promotion under this guidance are wider than the International Code of Marketing of Breast-milk Substitutes.

The terms of promotion has not been define of the International Code of Marketing of Breast-milk Substitutes but this guidance define that the “promotion is “broadly interpret to include the communication of messages that are designed to persuade or encourage the purchase or consumption of a product or raise awareness of brand. Promotional message may be communicated through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods. In addition to promotional techniques aims directly at consumers, measures to promote to health workers or to consumers through other intermediaries are included. There does not have to be a reference to a brand name of a product for the activity to be considered as advertising or promotion”

Cross promotion is “a form of marketing promotion where customers of one product or service are targeted with promotion of a related product. This can include packaging, branding and labeling of a product to closely resemble that of another (brand extension). In this context, it can also refer to use of particular  

\textsuperscript{75} The purpose of Maternal, Infant and Young Child Nutrition Guidance on ending the inappropriate promotion of foods for infants and young children.
On recommendation No.5 state that “There should be no cross promotion to promote breast-milk Substitutes indirectly via the promotion of foods for infants and young children.

a. The packaging design, labelling and materials used for the promotion of complementary foods must be different from those used for breast-milk substitutes so that they cannot be used in a way that also promotes breast-milk substitutes.

b. Companies that market breast-milk substitutes should refrain from engaging in the direct or indirect promotion of their other food products for infants and young children by establishing relationship with parents and other caregivers.”

2.3.2.4 The recommendation concerning health worker

In case of health worker under recommendation No.6, this guidance recommend that health worker should not do as follows:

a. Accept free product, samples or reduced-price foods for infants or young children from companies except as supplies distributed through officially sanctioned health programs. Products distributed in such programs should not display company brands;

b. Accept equipment or services from companies that market foods for infants and young children;

c. Accept gifts or incentives from such companies;

d. Allow health facilities to be used for commercial events, contests or campaigns;

e. Allow companies that market foods for infant and young children to distribute any gifts or coupons to parents, caregivers and families through health facilities;

f. Allow such companies to directly or indirectly provide education in health facilities to parents and other caregivers.
g. Allow such companies to sponsor meetings of health professionals and scientific meetings.

2.3.2.5 The recommendation for using the messages to promote food for infant and young children

Under recommendation 4, the messages used to promote foods for infant and young children should support optimal feeding and inappropriate messages should not be included. Message about commercial products are conveyed in multiple forms, through advertisements, promotion and sponsorship, including brochures, online information and package labels. Irrespective of the form, message should always:

a. Include a statement on the importance of continued breastfeeding for up to two years or beyond and the importance of not introducing complementary feeding before 6 months of age;

b. Include the appropriate age of introduction of the food (this must not be less than 6 months;

c. Be easily understood by parents and other caregivers, with all required label information being visible and legible.

And message should not include any images, text or other representative that is likely to undermine or discourage breastfeeding, that makes a comparison to breast-milk, or that suggests that the product nearly equivalent or superior to breast-milk.
3.1 The situation of the marketing of breast-milk substitutes in Thailand.

The manufacturers attempt to promote breast-milk substitute products through the marketing communication that influence the decision of the mother to switch from breastfeeding to formula feeding. As a result of extremely promote an infant formula product, it misleads the consumer to choose breast-milk substitute product instead of their natural breast milk without concerning to an ethic or the consumer right of protection. It is one of important factor causes the low rate of breastfeeding in Thailand.

There are various marketing communications used by the breast-milk substitute manufacturer in Thailand that violate the International Code. In this chapter, the author provides vivid examples of marketing tactics that violate the main point of the International Code of Marketing of Breast-milk Substitutes as follows:

3.1.1 Marketing to general public

a. Advertisements

Conventional modes of promotion, such as product advertisements in newspapers, parenting magazines, on TV, and billboards, continue to be favored means of influencing mother’s decision to formula feed and their brand selection.

Television and radio advertising of growing-up milk marketed for infants and young children (Especially for 3 to 12-month babies, an age where breastfeeding is still recommended) and complementary foods when marketed for below 6 months of age.

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76 Growing-up milk (GUM) products intended for children between 1 and 3 years of age are increasingly being introduced into the diets of young children. Although it is not a necessity for adequate nutrition of that age group, they can compensate for nutritional deficiencies which may occur in the transition phase of infant nutrition of family food, particularly when bad dietary patterns prevail in the family.
month babies which violate the scope of the International Code of Marketing of Breast-milk Substitutes which prohibits advertising and all other forms of promotion of products under the scope of the Code.

Dumex, Enfa, Hi-Q and Mommy Bear advertise their infant formula products by cross branding through product for older babies in the same brand through TV and Youtube.

**Figure 1 Advertisement of breast-milk substitutes on television**
Breast-milk substitutes manufactured advertise their brand by referring to the scientific name of nutrient such as DHA, ARA, L-Protextus which intends to lure the customer to believe that breast-milk substitute are similar or equivalent to breast milk because it has enough nutrient for their infant.

The research of IHPP about the recognition of breastfeeding, infant formula advertising and the decision of choosing infant formula or human breast milk show that the lack of correct knowledge about the benefit of breastfeeding through public media and insufficient measures to control the marketing of breast-milk substitute causes the misunderstanding that infant formula can substitute as breast milk.

According to the IHPP research, the frequency of infant formula media recognition through television is the first level (7,492 times) more than breastfeeding campaign through the same media (5,259 times) or about 34%.\(^{77}\) It means that the measures to control the advertisement of infant formula is insufficient.

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\(^{77}\) IHPP supported by Thai health officer, *The study of an acknowledgement of breastfeeding and infant formula advertisement with knowledge, attitude and the decision of choosing milk of mother and their relations: Report 2013* (2013), 38
b. Cross promotion

The manufacturers apply the cross promotion as one form of marketing to advertise their infant formula product which actually prohibited to advertise through the same logo, labelling and packaging.

In Thai general market, it can be easily found the same and similar packaging design, labeling and advertising that cause the risk of confusion between the products. The labels of follow-on formula, growing-up milk and others product in the same brand are similar to infant formula.

![Figure 3 Cross promotion through the same logo, similar packaging of infant formula through the follow-on formula](image)

Enfa, the product by Mead Johnson, promotes their brand by using product for older babies in the same brand. Also, the handbook shows each step of their infant formula by leaving the product in the age of 0-3 years old to avoid the violation. They can continually promote their product through older baby product.

The advertising of growing-up milk serves as cross promotion by designing formulated milk for expecting mothers, infant formula and growing-up milk with similar brand name, logos, promotional slogans and others gimmicks, companies encourage brand loyalty from conception to school, creating a faithful consumer. Some companies use the figures “1” and “2” in advertisements for growing-up milk to represent their formula and follow-up formulas in their complete product line.
Figure 4 Packaging and labelling of product are closely resemble to the formula product.
Figure 5 NUTRICIA packaging and labeling of milk for mother are closely resemble to the formula products.

Milk for mothers are unnecessary products. Besides, extending the company’s product line, milk for mothers are packaged and promoted in ways that cross promote its formula products.  

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c. Providing the seminar and meeting

Companies are now brazenly hold the events for parents and children through activities in the public places like shopping malls. By means of introduction, mothers are induced to register for privilege rights and free gift set in the event, in order to get information for continue contacting with pregnant women and mothers. Furthermore, the companies claim for an expert and famous presenter to induce mother to participate in this event. The International Code of Marketing of Breast-milk Substitutes prohibits marketing personal from seeking direct or indirect contact with women and mothers.\textsuperscript{79}

![Mommy Bear brand offers special gift for inviting mother to participate in the event.](image)

Figure 6  Mommy Bear brand offers special gift for inviting mother to participate in the event.

Mommy Bear webpage invites mother to participate in the event by offering special gift preparing for only mother who registers and acts according to their condition. However, the hidden objective of this event is to get mother’s information to continue contact with them for the benefit, their product marketing.

\textsuperscript{79} International Code of Marketing of Breast-Milk Substitutes, Article 5.5 prohibits marketing personnel from seeking direct or indirect contact with pregnant women and mothers.
Figure 7 Enfa claims for an expert lecturer and famous representative to build up the reliability together with workshop for promoting their brand
Figure 8 Enfa promotes their product by providing an event to the members who have registered through their website.
d. Promoting the product through social media

Companies are increasing using social media like Facebook, Twitter, Google, Youtube as inexpensive advertising methods, that are the easy ways to interact with mothers or prospective mothers with promotions, information, and to publicize their activities or any event for free gift set when participating in their event or any activities.
e. Promoting the product through mobile application

One of the popular tactics used for making the promotion and advertisement is a mobile application which is created to be easily used along the period of pregnant until child’s birth, by introducing the information for mother causes the customer gives their loyalty to the brand. Furthermore, the members will gain and accumulate the point when they use this application in order to exchange for the reward or any other privilege rights which the only member can get.

The International Code of Marketing of Breast-milk Substitutes was written for long time before the emergence of smart phone applications. However, these banded apps undeniably violate the International Code\(^\text{80}\), which specially prohibits direct and indirect marketing to pregnant women and mothers.

\(^\text{80}\) ibid.
Figure 12 Enfa brand provides the privilege extra point if the customer use their application
Mead Johnson has developed this application in order to direct contact with the consumers and promote their product through an advice in each step of an infant to the mother or pregnant women like their customer feel free to receive from their information. While they offer the promotion and persuade their customer to enter into this apps by providing the point for a free gift set or the other list they have. The more customers enter into this apps, the more point they have for the reward.
f. Giving free sample of breast-milk substitute and gift set to pregnant women

The International Code of Marketing of Breast-milk Substitutes prohibits companies from giving samples and gifts to mothers.\textsuperscript{81} Although samples may appear to be a generous gesture by companies, they undermine breastfeeding by interfering with its initiation and continuation. Infant formula is even promoted and distributed in hospital maternity clinics. Free infant formula samples are distributed to mothers from the day they give birth, if not before. This has caused many mothers to mistakenly believe infant formula is as good as breast milk, the "gold standard" when it comes to infant and young child nutrition.\textsuperscript{82}

\begin{figure}[!h]
\centering
\includegraphics[width=\textwidth]{figure14}
\caption{Dumex sent a free sample to the customer}
\label{figure14}
\end{figure}

Dumex sent a free sample to the customer who registers to their website together with the letter of thanks and offers the channel to directly contact with their brand.

\begin{itemize}
\item \textsuperscript{81} International Code of Marketing of Breast-Milk Substitutes Article 5.2 and 5.4 and 7.3
\item \textsuperscript{82} Bangkok Post 'Breastfeeding law is long overdue', Published (17 June 2013) <http://www.bangkokpost.com/print/355445/ accessed 30 August 2015> accessed 30 April 2016
\end{itemize}
Figure 15 Breast-milk substitutes brands provide the gift set and privilege right to pregnant women and mother who register to be a member of their brand

Companies efforts in every method to ensure that their name and products remain in mother’s minds by sending them the brand gifts, distributing these gifts, health facilities and workers imply their endorsement of the companies and products. However, mothers have to register her information of pregnancy and companies in order to continually contact with the mothers.
g. Effort to directly contact with pregnant and mother.

Figure 16 The companies offer gift voucher and reward for anyone who is able to provide the information of pregnant women and mothers.

The companies try to directly contact with pregnant women and mothers by stimulating the related person other than mother and pregnant women to introduce the name and personal information of pregnant women in order to contact with the target group in the future.

Hi-Q and Du-Mex offer a special gift set for mother who register to be a member of the brand through their webpage for sending the message about the information moreover to stimulate the customer remembrance of their brand through the picture, wording, and the logo.
Figure 17 Directly contact with the customer by sending the text message

The companies directly contact with the customer who registered to their brand through the mobile text message and by calling to introduce an information about an infant health.

h. Claiming to be ‘experts’ on nutrition and childcare

Infant formula brand provides various channels to contact with their officer who claim to be an expert lure mother to trust in their brand; for example, their webpages, emails, care lines, Facebook pages including live chats, providing an introduction together with the direct channel to contact with infant formula product’s expert.

Figure 18 Hi-Q and Dumex induce the customer to directly contact with them by claiming to an expert advice
Figure 19 Enfa claims for an expert opinion about their application

Figure 20 Enfa provides live chat and directly contact with an expert for customer
Figure 21 Dumex posted an introduction to take a care of infant and young children, concealing with the channel to contact with their brand.

i. Providing the sales promotion

Figure 22 Enfa offer “buy 1 get 1” for sales promotion
Enfa and Dumex brand apply the sales promotion as one of marketing communications by cooperating with super stores. Enfa offers special discount to only Big-C department store customer who has Big-C member-card, while Dumex offers the stamps concerns with the other promotion when the customer buys the Dumex product.

Figure 23 Sales promotion with the super store partner

Figure 24 Enfa offers the “Music Brain Tales” which has Enfa’s logo to the customer who buy double of their follow-on formula
Figure 25 Enfa provides premium gift set with Enfa’s logo to customer who buy their breast-milk substitutes product.

Figure 26 Enfa provides the big set of playthings if the customer buy their product.

Enfa provides special sales promotion by the discount when the customer buy their product by the stipulated condition, they will receive the special offer gift set like Enfa A+ Non-stop Learning Beach set like this case.
Figure 27 Mommy Bear brand offers pillow with brand’s logo if buying follow-on formula

Mommy Bear offers “cuty cushion” and “pillow” which have the brand’s logo to the customer when they buy their breast-milk substitute product.
Figure 28 Enfa provides sales promotion by giving the reward for the customer who participate in their activities.

Figure 29 Dumex proclaims the name of person who get the reward from participating in their activities.
3.1.2 Promotion in healthcare facilities and to health workers.

Infant formula companies are imitating baby food counterparts by sponsoring events organized with health associations or health professionals, give rise to interesting conflicts. They take out booths to provide information to health workers, but much of it is neither scientific nor factual, as required by the International Code, it is in fact promotion.

Figure 30 Enfa exhibited their brand and provide their gift set for health worker

The booths were exhibited at Hua Chiew Hospital, private hospital in the health worker seminar aiming to offer free example and gift set for health workers.
3.2 Legal control of the marketing of breast-milk substitutes in Thailand.

As provided through the media in Thailand, there are various marketing communications which the manufacturers apply to promote their products. However, some marketing strategy oversteps the consumer right to be recognized the fact about the product in order to correctly decide whether to buy that product or not. The consumer may decide to buy such product because of an influence of strong marketing. This makes disadvantage to the consumers since they do not actually know the market situation and the fact of the product’s quality or price. In the case of violation to the consumer’s right, they have to spend much time and expenses for legal proceedings.  

Thailand obviously implements the International Code of Marketing of Breast-milk Substitutes by enforcing the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008.

Other than the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008 to control the marketing of breast-milk substitutes, the concerning provision which aim to protect the right of the mother and her infant from an aggressive marketing on behalf of the consumer to receive the truth statement, appropriated and true information about breastfeeding and breast-milk substitute without false or exaggerated is the Consumer Protection Act. However, in case where any law has specifically provided for any matter, such matter shall be subject to the provisions of such law as not a repetition or contrary to such provision.

When modified milk, infant food, follow-up formula modified milk/infant food for infants and young children and special purpose food intended for infants and young children were classified as a specific food, any action from the manufacturer including to the advertisement are under control of Food Act B.E.2522. However, the Food Act B.E.2522 has the scope to control only for advertisement but cannot cover the other kind of marketing and promotion.

In this chapter, the author will mention the Thai law concerning with the marketing of breast-milk substitutes.

3.2.1 The controlling of advertisement

3.2.1.1 The Consumer Protection Act B.E.2522

The Consumer Protection Act B.E.2522 was enacted to protect the consumer’s right in general by stipulating the duty of trade business operator and advertising business operator, in order to provides fairness to the consumer, including the establishment of the relevant government organization to supervise, monitor, and coordinate among government authorities for the purpose of consumer protection.\(^{84}\)

a. Enforcement

The prohibition to advertise under the Consumer Protection Act is provided in section 21-23 as follows:

(1) An unfair statement of advertisement to consumers or which may cause adverse effect to the society as a whole notwithstanding such statement concerns with the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of goods or services, including to false or exaggerated.\(^{85}\)

(2) An effected advertisement to a method which may be harmful to health, or cause physical or mental harm or annoyance to consumers.\(^{86}\)

\(^{84}\) ibid.
\(^{85}\) Consumer Protection Act B.E.2522, s 22
\(^{86}\) Consumer Protection Act B.E.2522, s 23
(3) In the case where any law has specifically provided for any matter, such matter shall be subject to the provisions of such law, and the provision of this act shall apply only in so far as it is not a repetition or contrary to such provision.\textsuperscript{87}

Considering to the provision of the Consumer Protection Act, it can be said that this act was aimed mainly to protect consumer concerning the advertising of any product and service in general rather than specific the food advertising. In any specific case legislation existing, this act will not be applied.

b. Regulator’s Responsibility

The authorities of the Office of the Consumer Protection Board are defined in section 20 to have the power and duties as follows:\textsuperscript{88}

(1) To receive complaints from the consumer who suffer hardship or injury resulting from the acts of the business man for further submission to the Board;

(2) To follow up and scrutinize actions of the business man who may do anything infringing the consumer’s right, and arrange for testing or verifying any goods or services as it think proper for the protection of the consumer’s right;

(3) To encourage or conduct the study and research on the problem concerning the consumer protection with other academic institutions and other agencies;

(4) To promote and encourage the providing of education the consumers at all levels on safety and harm from the goods or service;

\textsuperscript{87} Consumer Protection Act B.E.2522, s 21
\textsuperscript{88} Consumer Protection Act B.E.2522, s 20
(5) To propagate technical information and provide educational information to consumer in order to instill the consumption habit promote health, is economical and maximizes the utilization of natural resources;

(6) To co-operate with the government offices or state, agencies which have the power and duty to control, promote or prescribe the standard of goods or services;

(7) To do any other acts as entrusted by the Board or the ad hoc committees.

Such as notifying or advertising the news pertinent to the goods or services which may be the cause of the injury or damage to the consumer’s right. The name of goods or services or the name of business operators may be specified. Additionally, the OCPB cooperates and expedites its staff and staffs of other government bodies and agencies to take actions in compliance with their authorities prescribed by the laws.89

c. Authorized agency’s responsibility

Advertising control according to the Consumer Protection Act B.E.2522 is under the power of the Committee on Advertisement90 which “consists of not less than seven but not more than thirteen members qualified in the relevant fields appointed by the Board.”91 “A member of an ad hoc committee will hold office for a term of 2 years.” The Committee on Advertisement will have the duty to monitor and scrutinize the advertising of goods and services of all kinds in all types of media. Without specific regulatory organization or law, the consideration of advertisements may take on various means including the complaints received from general people who

89 Office of the Consumer Protection Board, (n 86).
90 Consumer Protection Act B.E.2522, s 14
91 Consumer Protection Act B.E.2522, s 14
submit the unlawful advertisement detail to the committee for consideration and taking legal action.\textsuperscript{92}

Under section 117 the Committee also has the power to order any person to submit documents or particulars in connection with the subject-matter of complaints and the person concerned may be summoned to give an explanation.\textsuperscript{93} Moreover, the committee can provide reasonable opportunity for the person accused or suspected of having committed an act infringing the consumer’s rights to submit representation and express opinion except in the case of necessity or urgency.\textsuperscript{94}

It can be concluded that the follow-up of advertisement under this Act relies on the system that involves hearing of fact, inquiries, and submission of evidences to verify the advertisement.\textsuperscript{95}

The power and duty of the Committee on Advertisement are specified in chapter 2 part 1 section 22 to 29 as follows:

(1) The committee has general duty to supervise and monitor advertising of goods and services which are not under the control of the other specific laws. An advertisement may not contain a statement which is unfair to consumers or which may cause adverse effect to the society as a whole; that is, notwithstanding such statement concerns with the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of goods or services.\textsuperscript{96}

\textsuperscript{92} Suma Supanit, Legal Explamation of Advertisement 21 (2nd ed.2008)
\textsuperscript{93} Consumer Protection Act B.E.2522, s 17
\textsuperscript{94} Consumer Protection Act B.E.2522, s 18
\textsuperscript{95} Supanit, (n 93).
\textsuperscript{96} Consumer Protection Act B.E.2522, s 14
(2) The power to issue the orders in advance the potential damage or injury to consumers due to particular advertisement of goods and services by prescribing conditions related to such goods or services.\(^{97}\)

(3) The power to prescribe that the advertisement through such advertising media must be accompanied by the explanation to that effect so that the public may be informed that such statement is for advertisement together with may prescribe any condition for the compliance therewith when the committee has an opinion that the consumers should be informed that a statement which is used in any advertising media is for advertising purpose.\(^{98}\)

(4) The duty to check advertising statement being submitted for consideration by business operators prior to advertising.\(^{99}\)

(5) In case, the Committee on Advertisement had a reasonable cause to suspect any statement that used in an advertisement. That is false or exaggerated under section 22 paragraph two (1) the Committee on Advertisement has the power to issue an order requiring the advertiser to substantiate the claim.\(^{100}\)

(6) In case, the Committee on Advertisement is the opinion that any advertisement violates against the law as (1) to (2), the Committee on Advertisement will have the power to issue one or several of the following orders:

(6.1) to rectify the statement of method of advertisement

(6.2) to prohibit the use of certain statements as appeared in the advertisement

(6.3) to prohibit the advertisement or the use of such method for advertisement

\(^{97}\) Consumer Protection Act B.E.2522, s 24

\(^{98}\) Consumer Protection Act B.E.2522, s 26

\(^{99}\) Consumer Protection Act B.E.2522, s 29

\(^{100}\) Consumer Protection Act B.E.2522, s 28
misperception of the consumers in accordance with the rules and procedure
prescribed by the Committee on Advertisement.

3.2.1.2 The Food Act B.E.2522

In the consumer protection cases, consumers are protected
under the Consumer Protection Act B.E. 2522; this law, however, is enforced for
consumer protection generally. In the case where the other specific laws are available
to include consumer protection, such law is used and enforced for the particular case.\textsuperscript{101}

In case of modified milk, infant food, follow-up formula
modified milk/infant food for infants and young children and special-purpose are classified
as a “Food” under the definition of Food Act B.E.2522.\textsuperscript{102} Thus, any problem about
advertisement of “food” is specifically being under the Food Act before the Consumer
Protection Act respectively.

The Food and Drug Administration is an organization who
responsible for carrying out Food Act B.E.2522 with the purpose for controlling the
food, to ensure that the food is safety without health hazard for consumption. To achieve
this purpose, it requires the foods controlling from their manufacturing, important,
distribution, including advertising.

a. Enforcement

The enforcements under the Food Act B.E.2522 concerning
with the advertisement are able to consider as follows:

\begin{itemize}
  \item Consumer Protection Act B.E.2522 section 21 states that \textit{“in the case where any
  law has specifically provided for any matter, such matter shall be subject to the
  provisions of such law, and the provision of this Act shall apply only in so far as it is
  not a repetition or contrary to such provision”}
  \item Food Act section 4 define the definition of “Food” that means \textit{“edible items and those, which sustain life: (1) Substance can be eaten drunk, sucked or gotten into the body either by mouth or by other means, no matter in what form, but not including medicine, phychotropic substances, narcotic under the law as the case may be.”}
\end{itemize}
(1) False or deceptive advertising of the quality, usefulness or indication of a food is prohibited. If whoever violates this, he shall be liable to imprisonment of not more than 3 years and a fine of not more than thirty thousand baht or both.

(2) If anyone wishing to advertise the qualities, usefulness or indication of a food by radio, television, film, newspaper or other printed matter or by other means for business purposes, they must submit sound, pictures or films or text of the advertisement to the authority of consideration, and can be advertised after receiving permission. Whoever violates this, he shall be liable to a fine not more than five thousand Baht. Further, the authority is empowered to give a written order to food advertising person to stop such advertising. Including a food which the Commission deems as not having the usefulness, quality or indication as advertised, the authority also has the power to issue an order to food advertising person to stop advertising.

It could be stated that the process of food advertising controlling is pre-censor process; that is any food advertisement requires an approval before being publicized. Authorized official has to consider and check particular advertising statement before allowing them disseminated through various media.

b. Regulator’s responsibility

The Office of Food and Drug Administration is a government body with the main role to protect consumer’s health, to ensure safety and standard quality of health products. The Office of Food and Drug Administration promotes proper consumption behavior by providing accurate technical knowledge

103 ibid.
104 Food Act B.E. 2522, s 40
105 Food Act B.E. 2522, s 70
106 Food Act B.E. 2522, s 41
107 Food Act B.E. 2522, s 71
108 Food Act B.E. 2522, s 42
based on reliable and appropriate evidence, in order to ensure that certain people consume safe and beneficial health products. The power and duty of the Office of Food and Drug Administration include:  

1. Implementing in accordance with the law on food, drugs, cosmetics, hazardous substances, psychotropic substances, narcotics, medical devices, prevention of abuse of volatile substances, and other related laws.  

2. Developing systems and mechanisms for implementing the enforcement of law under FDA’s responsibilities.  

3. Conducting the surveillance and inspection of the standard quality of products, business establishments, and advertisements, as well as undesirable effects of the products, including the monitoring and surveillance of health product information both within and outside of the country.  

4. Conducting studies, analyses, research, and developing bodies of knowledge, technologies as well as effective and efficient work system regarding health products for consumer protection.  

5. Promoting and improving consumer’s capacity the enables them to correctly and properly choose safe and worthy health products, including their complaints for protecting their own rights.  

6. Developing and promoting the operation for consumer protection on health product by involving various sectors of government, non-government, public and the network of civil society on health.  

7. Carrying out other works defined by laws as FDA’s authority and duty or assigned by the Ministry or the cabinet.  

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3.2.1.3 The Announcement of the Food and Drug Administration
Criteria for Food Advertisement B.E.2551 and revised (No.2) B.E.2555 (2012)

a. General criteria of food advertising

(1) Food advertising must be approved by the Thai Food and Drug Administration, which had provided criteria, procedures, requirements, and guidelines for food advertisement such as advertisement of food benefits, quality or properties must provide no false or exaggerated advertisement, mislead inappropriately the consumers on food essences that cause their misbelief.

(2) Advertise only the properties that are permitted on the label as approved by the Food and Drug Administration or in compliance with the Ministry of Public Health’s Notification on labelling or the Ministry of Public Health’s Notification on nutrition labelling.

(3) Examples of words that are prohibited to use in advertising like the benefits, qualities or properties of food are superb, wonderful, excellent, absolute, sacred, magic, most or other words with comparable meaning to these words.

(4) No advertisement for a medicinal product or treatment may include a testimonial by a doctor or be presented by such person.

(5) On TV media, it requires a warning statement “Read the warning label before consuming.” Audio advertisement must be clear in every syllable or use super letters for no less than 5 seconds. Warning statement must be displayed using the letters with colours, forms, and size easy and clear to read.

(6) No medical and health personnel or construe being the presenter as the persons present to give advice, support or model in the advertisement.
b. Specific criteria of food advertising

In case of food for infant and young children, this announcement laid down the regulations of advertisement as follows:

(1) Modified milk for infants (0-12 months)
(2) Infant formula (6 – 12 months or 1-3 years)
(3) Follow up formula modified milk for infants and young children (0-12 months)
(4) Follow-up formula infant food for infants and young children (6 – 12 months or 1-3 years)
(5) Special purpose food intended for infants and young children.

This group of product can only be advertised by dissemination of technical information in medical journal, dissemination of technical knowledge to doctors of medicine, nurses, midwives or nutritionist. Such information given must not show that any product is better, equivalent to, or similar to breast milk, or persuade not to practice breastfeeding, and it requires a statement “Human breast milk is the best for an infant because of its fully nutrition value.”

(6) Cow milk powder, flavored milk powder and milk powder products of which label specified age to target group from 1 year up.

It must provide a statement showing breastfeeding promotion as “Human breast milk is best for infant” with clearly visible colour and letters and duration of presentation shall be enough to communicate for perception and understanding of content in sound and pictures.

(7) Dairy and dairy products other than cow milk powder, flavored milk powder and milk powder products (No.4 product) which label specified age of target group from 1 year up.
(7.1) Shall not communicate to be meaningful as a product for a specific group because everybody can consume including 3 years old children

(7.2) Age of presenters shall be older than 3 years and speaking with clear pronunciation

3.2.2 The controlling of labelling

In the issue of labelling, the author will focus on the statement, the prohibition and presenting name of food and the prohibited and the statement should be provide on the label depending on each notification as follows:

3.2.2.1 The Notification of Ministry of Public Health (No.367) B.E. 2557 (2014): Labelling of Packaged Foods

This notification provide the general requirement of label as follows:

a. Label of food manufactured for export can use any languages but at least shall be displayed the manufacturing country and food serial numbers or number of food establishment or name and address of manufacturing establishments, one or the other.\(^{110}\)

b. Prescribing controlled foods shall be delivered to the Food and Drug Administration for an approval prior to use.\(^{111}\)

c. Label of foods shall be placed, tagged or presented on containers or packets of food packaging in a prominent position, size of label and containers or packets shall be proportionate.\(^{112}\)

d. Label of food shall not mislead either directly or indirectly with food and words, pictures, pictorial, invented designs, mark or trademarks that suggested to other products.\(^{113}\)

\(^{110}\) The Notification of Ministry of Public Health (No.367) B.E. 2557, cl 5
\(^{111}\) The Notification of Ministry of Public Health (No.367) B.E. 2557, cl 6
\(^{112}\) The Notification of Ministry of Public Health (No.367) B.E. 2557, cl 8
\(^{113}\) The Notification of Ministry of Public Health (No.367) B.E. 2557, cl 9
e. Label in any languages, texts, picture, pictorial, invented designs, mark, brands or trademarks, registered trade mark shall be presented in the following manners:  

(1) Not false or deceptive to create gullibility or misleading its important characteristics;

(2) Name of food, composition of food, proportion of food, quantity of food or properties shall not be presented in false or deceptive;

(3) Words, name, pictures, pictorial, invented designs, marks or trade mark shall not be presented in such a way to mislead that foods contain such ingredients that actually there is no such ingredients or contain in small amount which its properties cannot be given.

(4) Words or texts shall not be homophone, homograph that communicate to express boasting, false, exaggerated quality, properties to create gullibility;

(5) Not be opposed to Thai culture and morale or indicate to ruin dignity of Thai language.

(6) Not to promote or to cause of conflict, disharmony or negative effect both directly and indirectly to society, culture, morale, tradition, or behavior regarding genders, language and violence.

f. The presenting name of food shall follow clause 10 and either following names can be used:

(1) Specific name of food, common name or usual name;

(2) Name use to describe type or kind of foods;

(3) Trade name, use of such name type or kind of foods shall be appeared in the same line together with trade name and size of letters may be different from trade name but still shall be illegible.

h. Text on label shall be prominent and readily legible, size of the letters and space of label shall be proportionate and The height presentation of the
name of food shall not be less than 2 mm and shall be readily legible proportionate to area of label and appear in a main part when marketing and shall have horizontally consecutive texts, except for label smaller than 35 cm, sizes of letters not less than 1 mm shall be presented.\textsuperscript{116}

3.2.2.2 The Notification of Ministry of Public Health (No.351) B.E. 2556 (2013): Flavoured Milk

Labels of flavoured milk shall follow to the Notification of the Ministry of Public Health, Re: Label, except for names of flavoured milk shall follow this notification as follows:

a. “… flavoured milk”, or “… flavoured partly skimmed milk” or “…flavoured skimmed milk” “… flavoured non-fat milk”, (blanked are to designate its flavouring or taste and its heat treatment, for milk in liquid form as stipulated in clause 5 shall be designed, as the case may be.) For flavoured milk which are produced from raw cow’s milk or dry flavoured milk powder the physical condition of dry flavoured milk powder may also be designated as the name of foods. Such as flavoured milk powder, flavoured milk tablet, etc.\textsuperscript{117}

b. “… recombined flavoured milk”, or “…recombined flavoured partly skimmed milk”, or “…recombined flavoured skimmed milk”, or ”…recombined flavoured non-fat”, (blanked are to designate its flavouring or taste and its heat treatment, for milk in liquid form as stipulated in Clause 5 shall be designed, as the case may be) for flavoured milk which are produced from milk powder, or containing milk powder as ingredient.\textsuperscript{118}

c. For trade names used, such name used shall be accompanied by expressions in (1) or (2) and shall also be expressed on the same line of trade name and shall be in different size of alphabets of trade names but subject to be clearly.”\textsuperscript{119}

\textsuperscript{116} The Notification of Ministry of Public Health (No.367) B.E. 2557, cl 14
\textsuperscript{117} The Notification of Ministry of Public Health (No.351) B.E. 2556, cl 13
\textsuperscript{118} ibid.
\textsuperscript{119} ibid.
If any manufacturer would like to use the trade names on the label, the names will be accompanied by expression in (1) or (2) and on the same line of trade name. And that will be in the different size of alphabets of trade names but the subject is clearly read.

3.2.2.3 The Notification of Ministry of Public Health No.156 (B.E. 2537 (1994)) Re: Modified Milk for Infant and Modified Milk of Uniform Formula for Infant and Small Children

This notification enforces with the modified milk for infant (aim to feed infant of one day to 12 months old in lieu of substitution of mother’s milk) and modified milk of uniform formula for infant and small children (aim to feed infant of 6 months old to 12 months old or from 1 year old to 3 years old).

The display of label for this kind of product are stated in clause 11. Beyond, following to the general regulations of label by the Notification of Ministry of Public Health No.367 on labelling of packaged Foods, the Notification No.351 on flavored milk and provide the necessary information of composition of product, the statement will be in Thai language; however, foreign language is allowed, and there will at least contain the following details.

Rather than the statement about the date of manufactured, the quantity, ingredient, Name and location of the manufacturer, the statement of modified milk for infant and modified milk of uniform formula for infant and small children will contain the following statements:

a. Modified milk for infant

   (1) Statement reading “Important message:

   (1.1) Mother’s milk is the best food for infant because it has full nutrition value.

   (1.2) Should use this product under recommendation of a physician, nurse or nutritionist.

   (1.3) Incorrect preparation or mixture will be hazardous to infant”
(2) Statement showing directions or table of recommended daily use.

b. Modified milk of uniform formula for infant and small children

(1) Statement reading: “Do not use to feed infant under 6 months old” in red bold characters of not less than 5 mm. high in a rectangular frame with white background, and the colour of the frame must be in contrast with that of label background.

(2) Statement reading: “Natural odour added”, “artificial odour added”, “synthetic odour added”, “natural flavor added” or “artificial flavor added”

(3) Statement as prescribed by the Food and Drug Administration

Statement under this Clause is provided in the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revised (No.2) B.E.2555 (2012) “Human breast milk is the best for infant because of its fully nutrition value”

3.2.2.4 The Notification of Ministry of Public Health No.157 (B.E. 2537 (1994)) Re: Food for Infant and Food of Uniform Formula for Infant and Small Children

This notification enforces with the food for infant (aim to feed infant of 6 months old to 12 months old or from 1 year old to 3 years old) and food of uniform formula for infant and small children (aim to feed infant of 6 months old to 12 months old or from 1 year old to 3 years old).

Rather than the statement about the date of manufactured, the quantity, ingredient, name and location of the manufacturer, the statement of food for infant and food of uniform formula for infant and small children will contain the following statements:
a. Food for infant

(1) Statement reading “Important message:

(1.1) Mother’s milk is the best food for infant because it has full nutrition value.

(1.2) Should use this product under recommendation of a physician, nurse or nutritionist.

(1.3) Incorrect preparation or mixture will be hazardous to infant”

(2) Statement showing directions or table of recommended daily usage.

b. Food of uniform formula for infant and small children

(1) Statement reading: “Do not use to feed infant under 6 months old” in red bold characters of not less than 5 mm. high in a rectangular frame with white background, and the colour of the frame must be in contrast with that of label background.

(2) Statement reading: “Natural odour added”, “artificial odour added”, “synthetic odour added”, “natural flavor added” or “artificial flavor added”

(3) Statement as prescribed by the Food and Drug Administration

Statement under this clause is provided in the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revised (No.2) B.E.2555 (2012) as the author mentioned in No.3
3.2.3 The controlling of the marketing

3.2.3.1 The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008

Thailand obviously implements to the International Code of Marketing of Breast-milk Substitutes by providing the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008. Thailand provides this regulation to promote, protect and support breastfeeding through the passage of meaningful legislation and/or regulations that would put the minimum standards recommended by the International Code of Marketing of Breast-milk Substitutes in place.

This regulation aims to shield breastfeeding from commercial promotion that affects mothers, health workers and health care systems as follows:

a. **Aim of the Code**: to contribute to the provision of safe and adequate nutrition for infants by the protection and promotion of breastfeeding and by ensuring the proper use of breast-milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution.\(^\text{120}\)

b. **Scope of the code**: The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008 control the marketing of breast-milk substitute in the age of 0-2 years.\(^\text{121}\) This regulation applies to the marketing of infant formula in Thailand as suitable to provide the sole source of nourishment for an infant or replace part of a breastfeed including to the availability of the product and information.\(^\text{122}\)

\(^{120}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 1
\(^{121}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 3
\(^{122}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 2
c. **Information and education**: specify the restriction on the production or publication of informational or educational material dealing with the feeding of infants.\(^{123}\)

d. **Marketing to the general public**: prohibit the manufacturer from advertising or promoting breast-milk substitutes to the public, providing free sample or infant formula to mother, pregnant woman including her family, providing any free gift set or the other which directly cause remind to the breast-milk substitute product.\(^{124}\)

e. **Health care system**: the Ministry of Public Health has the duty to provide a proper measures for promoting breastfeeding by not support breast-milk substitutes products, not show any related products and any form of communication such as postcards, documents, brochures, except some that are allowed at the health place.\(^{125}\)

f. **Contact with the health workers and health practitioners**: the health workers have to protect and promote breastfeeding rather than support breast-milk substitutes. This chapter requires the producers, importers and distributors to give scientific and fact information to the health workers without persuading, induce to believe that breast-milk substitute can use as breast milk. Furthermore, this chapter lays the prohibition of the companies to provide free samples under this code including to related instrument to use their products to the health workers, the producers, importers and distributors have to disclose the support giving to the health workers for education, seminars, researching funds and administrative meetings and the institutes who receive the scholarship also have to disclose an information.\(^{126}\)

\(^{123}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 4

\(^{124}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 5

\(^{125}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 6

\(^{126}\) The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 7
g. **Involved person in marketing**: this chapter prohibits the persons who involved in marketing to publicize any information to the pregnant women, mothers and their family members. Furthermore, prohibiting the companies to calculate the commission for marketing personnel from the circulation under the prohibition of this code. The label have to be allowed by the FDA together with the wording specify by this code.  

h. **Labelling**: on the label need to have necessary information of using the product by not have any conflict of interest to breastfeeding.  

i. **Compositional Quality**: the quality of this code has to follow the quality of Ministry of Public Health standard.  

j. **Implementation**: the Ministry of Public Health has the responsibility to regulate, proclaim any proper regulations or notification to reach of the objective of this Regulation in order to conform to the international standard of WHO and UNICEF.  

### 3.2.3.2 The draft of legal control of marketing of food for infant and young children

There are 2 drafts which drafted by the Department of Health and the Council of State. No. 1087/2559

Both drafts provide the protection for infant and young children to breastfeed and promoting of breastfeeding for infant and young children by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing.  

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127 The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 8  
128 The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 9  
129 The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 10  
130 The Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008, Chapter 11
a. Regulator’s responsibility

Both drafts are under the authorization of the Ministry of Public Health, it shall be empowered to appoint competent officers, promulgate ministerial regulations, specifying the fees not exceeding the maximum fee specified in this act, exempting the payment of fees or set other activities in order to carry out the provisions of this act.\textsuperscript{131}

b. The scope of the draft

Both drafts cover the protection of infant (children under 12 months age) and young children (children who aged between one and three years.)

The draft from the Department of Health specify the controlled product modified milk for infants (0-12 months), follow up formula modified milk for infants and young children (0-12 months) and follow-up formula infant food for infants and young children (6-12 months or 1-3 years) which use to make a promote relating to the modified milk for infants or follow up formula modified milk for infants and young children.

In order to easily identify product, the draft from the Council of State No.1087/2559 classified the kind of product into food for infant and young children and supplementary food, in order to abbreviate the word which referred to the Food Act B.E.2522 register, because both of food for infant and young children and supplementary food are under the Food Act as follows:

(1) Food for infant and young children means

(1.1) Milk or foodstuffs which wholly satisfies the nutritional requirements on infant and young children.

(1.2) The other foodstuff which aim to feed infant and young children.

(2) Supplementary food means food intended for use by infants since 6 months old or young children.

\textsuperscript{131} Food Act B.E.2522, s 5
c. The detail of the drafts to control the marketing of food for infant and young children

(1) The draft from the Department of Health has not only specify the prohibition to the manufacturer, distributor, importer and representative but also impose the duty to the health worker, require for the information and label as follows:

(1.1) The measures of controlling the marketing of breast-milk substitute

Under this draft the manufacturers, importers and distributors are prohibited no matter by themselves action or by the representative acts to do which are separately in concern with the pregnancy, mother, health care system and health professional as follows:

(1.1.1) Advertising
(1.1.2) Selling or promoting by distribute the coupon for discount, provide the cheaper price, give any reward, present for induce the customer to buy their products
(1.1.3) Distributing free sample of their products except when necessary for the purpose of professional evaluation or research
(1.1.4) Donating except in the necessary cases provided by this act
(1.1.5) Directly giving any things which conceal the logo of their brand to the pregnant women, mothers and members of their families
(1.1.6) Supporting the seminar, meeting, activities, the competition, giving an advice through calling or any other methods directly or not directly contact with pregnancy mothers including members of their family by intend to recommend to choose an infant formula product connecting with their product
(1.1.7) Giving any things, providing any facility which their logo brand appears in order to connect with their product to the health care system
(1.1.8) Giving or offer to give any presents, money, inducement or any other benefit to the professional, nurse, and health care personnel who is responsible for infant and mother’s health care

(1.1.9) Providing the academic meeting, seminar concerning with foods and breast-milk substitutes for infants & young children and related products for health care system or professional and have to notify the detail of the meeting to the Department of Health

(1.2) The health care system duties

The health care system has the duty to act as follows:

(1.2.1) To acknowledge the health personnel to act according to this draft

(1.2.2) To control the using of infant formula product implementing to the regulations of international standard of WHO

(1.2.3) Monitor and scrutinize the promoting of breast-milk substitutes and related products

(1.2.4) Not show any product which appeared the logo or related symbolic connecting to the infant formula product

(1.2.5) Directly or not directly receive the budget from the academic meetings or seminars from the manufacturers, importers, distributors or representatives.

(1.3) The health worker duties and prohibitions

The health workers have the duty to advice the recommendation to support breastfeeding and notify to the Department of Health when there is the violation.\textsuperscript{132}

Moreover, the health worker\textsuperscript{133} is prohibited to act as follows:

\textsuperscript{132} Food Act B.E.2522, s 22
\textsuperscript{133} Food Act B.E.2522, s 23
(1.3.1) Receive any facilities or service which appears the logo connecting with the infant formula product from the manufacturers, importers, distributors or any other representatives.

(1.3.2) Receive any presents, money, any inducement or the other benefit from the manufacturer, importer, distributor or any other representative.

(1.3.3) Receive or distribute the sample of infant formula product except when necessary for the purpose of professional evaluation or research.

(1.3.4) Demonstrate to use the product except when specifically demonstrate to necessary infant by the medial reason to use the product.

(1.4) The punishment of violation

(1.4.1) Any person who violate to advertise, selling or promoting, distributing freely sample, directly give any things which conceal the logo, supporting the seminar to the pregnant women or mother shall be liable for administrative punishment to fine since 100,000 Baht and not exceeding 1,000,000 Baht and to fine not exceeding 10,000 Baht as long as not act according to the law.

(1.4.2) Any person who violate to give or provide any interest to the health care system of health worker have to be liable for administrative punishment to fine since 50,000 Baht and not exceeding 500,000 Bath.

(1.4.3) Any person who violate to donate breast-milk substitute and provide the meeting about food for infant and young children have to be liable for administrative punishment to fine since 20,000 Baht and not exceeding 200,000 Bath.

(1.4.4) Any health worker who violate section 23, the Department of Health has an authority to notify the violation to their council in order to conduct of their behavior.

(2) The draft from the Council of State No.1087/2559 control the food for infant and young children and supplementary food in different level as follows:
(2.1) Food for infant and young children

Under the provision of this drafting the measures to control the marketing of infant formula are provided in Article 14-23 as follows:

(2.1.1) No person shall advertise food for infant and young children.

Any person who advertise infant formula offence under section 14 the offender will be liable to imprisonment for a term not exceeding 3 years or to fine not exceeding thirteen thousand Baht or to both and to fine not exceeding ten thousand Baht as long as not act according to the law.

(2.1.2) Manufacturer, importer, distributor or agent of infant formula shall provide necessary information which contain the statement as same as appear on the registered label so as not contain the statement claiming to the nutrition and shall contain information as follows:

(a) Information of expenses and quantity of use for food for infant and young children
(b) Instruction for appropriate preparation, storage and disposal of the product and warning against the health hazards of inappropriate preparation and storage

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section or not give information or give the false information shall be liable to fine not exceeding twenty thousand Baht.

(2.1.3) Manufacturer, importer, distributor or agent of infant formula shall provide only information which have scientific evidence to support that information.

\[\text{Ref. code: 25595701040064XSN}\]

\(^{134}\) The draft of the Council of State No.1087/2559, s 14
\(^{135}\) The draft of the Council of State No.1087/2559, s 32
\(^{136}\) The draft of the Council of State No.1087/2559, s 15
\(^{137}\) The draft of the Council of State No.1087/2559, s 16
Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section shall be liable to fine not exceeding twenty thousand Baht.\textsuperscript{138}

(2.1.4) Manufacturer, importer, distributor or agent of infant formula shall not promote Food for infant and young children in the act as follows:\textsuperscript{139}

(a) Give out or give the discount coupon, special sales, reward, present or any other promotional device to induce sales of infant formula

(b) Directly or indirectly distribute or give an infant formula or samples of infant formula

(c) Giving of infant formula products, any things or any other things to pregnant women, mother or members of their families

(d) Directly or indirectly contact with pregnant women, mother who has an infant or young children to promote, support or introduce to use their infant formula product or induce to use

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section shall be liable to fine not exceeding thirty thousand Baht.\textsuperscript{140}

(2.1.5) If Manufacturer, importer, distributor or agent of food for infant and young children aim to give any things to health care organization, that kind of given things shall not conceal the logo of their brand or logo must not connect or induce to the brand.\textsuperscript{141}

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section shall be liable to fine not exceeding twenty thousand Baht.\textsuperscript{142}

\textsuperscript{138} The draft of the Council of State No.1087/2559, s 34
\textsuperscript{139} The draft of the Council of State No.1087/2559, s 17
\textsuperscript{140} The draft of the Council of State No.1087/2559, s 35
\textsuperscript{141} The draft of the Council of State No.1087/2559, s 18
\textsuperscript{142} The draft of the Council of State No.1087/2559, s 34
(2.1.6) Manufacturer, importer, distributor or agent shall not give or offer to give any presents, money, inducement or any other benefit to the health worker.\footnote{The draft of the Council of State No.1087/2559, s 19}

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section shall be liable to fine not exceeding twenty thousand Baht.\footnote{The draft of the Council of State No.1087/2559, s 36}

(2.1.7) Manufacturer, importer, distributor or agent shall not provide the academic meeting or seminar concerning with food for infant and young children to for health care system, health worker, pregnant women or mother who has infant and young children except the academic meeting or seminar which support the health care system by the condition of the Ministry of Public Health.\footnote{The draft of the Council of State No.1087/2559, s 20}

Manufacturer, importer, distributor or agent of food for infant and young children who fails to comply with this section shall be liable to fine not exceeding ten thousand Baht.\footnote{The draft of the Council of State No.1087/2559, s 37}

(2.1.8) Manufacturer, importer, distributor or agent shall not demonstrate or support to demonstrate the using of infant formula at the health care organization or any place for the commercial profit or promote or support the using of food for infant and young children.\footnote{The draft of the Council of State No.1087/2559, s 21}

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section will be liable to fine not exceeding twenty thousand Baht.\footnote{The draft of the Council of State No.1087/2559, s 38}

(2.1.9) Manufacturer, importer, distributor or agent will not donate an infant formula to health care organization or health worker.\footnote{The draft of the Council of State No.1087/2559, s 22}
This provision will not apply to the donation which has special objective for specific patient or patient who has unusual body. The method of donation will be prescribed in the Ministerial Regulations.

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section that will be liable to fine not exceeding twenty thousand Baht.\(^\text{150}\)

(2.1.10) Manufacturer, importer, distributor or agent which directly or indirectly provided information about mother and infant health to promote and support the using of infant formula or connect with food for infant and young children.\(^\text{151}\)

Manufacturer, importer, distributor or agent of infant formula who fails to comply with this section will be liable to fine not exceed twenty thousand Baht.\(^\text{152}\)

(2.2) Supplementary Food

Under the provision of this draft, the measures to control the marketing of follow-on formula are provided in Article 25-27 as follows:

(2.2.1) Manufacturer, importer, distributor or agent of supplementary food shall not promote the follow-on formula to anyone in the area of sanatorium, Department of Local Administration, State Enterprise, Government school, the other government organization or Thai red Cross act as follows:\(^\text{153}\)

(a) Give out or give the discount coupon, special sales, reward, present or any other promotional device to induce sales of infant formula

(b) Directly or indirectly distribute or give an infant formula or samples of infant formula.

\(^{150}\) The draft of the Council of State No.1087/2559, s 37
\(^{151}\) The draft of the Council of State No.1087/2559, s 23
\(^{152}\) The draft of the Council of State No.1087/2559, s 34
\(^{153}\) The draft of the Council of State No.1087/2559, s 24
Manufacturer, importer, distributor or agent of supplementary food who fails to comply with this section shall be liable to fine not exceeding thirty thousand Baht.\textsuperscript{154}

\begin{enumerate}[\textit{(2.2.2)}]
\item Manufacturer, importer, distributor or agent of supplementary food shall not promote follow-on formula to the pregnant women or mother who has infant under 6 months.\textsuperscript{155}
\end{enumerate}

Manufacturer, importer, distributor or agent of supplementary food who fails to comply with this section shall be liable to fine not exceeding twenty thousand Baht.\textsuperscript{156}

\begin{enumerate}[\textit{(2.2.3)}]
\item The provision of section 16, section 18, section 19 and section 20 of food for infant and young children shall also apply to follow-on formula.\textsuperscript{157}
\end{enumerate}

The penalty of violate section 26 of supplementary food are same as provided in infant formula provision.\textsuperscript{158}

\begin{enumerate}[\textit{(2.2.4)}]
\item Manufacturer, importer, distributor or agent of supplementary food, will not demonstrate or support to demonstrate the using of supplementary food at the health care organization.\textsuperscript{159}
\end{enumerate}

Manufacturer, importer, distributor or agent of supplementary food who fails to comply with this section will be liable to fine that not exceeding twenty thousand baht.\textsuperscript{160}

\begin{enumerate}[\textit{(2.3)}]
\item Competence of the officer
\end{enumerate}

\begin{flushleft}
\textsuperscript{154} The draft of the Council of State No.1087/2559, s 39
\textsuperscript{155} The draft of the Council of State No.1087/2559, s 25
\textsuperscript{156} The draft of the Council of State No.1087/2559, s 39
\textsuperscript{157} The draft of the Council of State No.1087/2559, s 26
\textsuperscript{158} The draft of the Council of State No.1087/2559, s 40, s 41, s 42 and s 43
\textsuperscript{159} The draft of the Council of State No.1087/2559, s 27
\textsuperscript{160} The draft of the Council of State No.1087/2559, s 44
\end{flushleft}
The Competent Officer whom appointed by the Minister for the executive of this act has the power to\textsuperscript{161}

(2.3.1) To enter into any place in during normal working hours for inspection the document, media or the other things related with the violation. Where it is suspected that there is a violation of this act, to take a photo or act as necessary for information or any evidence.

(2.3.2) To seize or attach document, media or anything else where it is connected with the violation

(2.3.3) To summon anyone to testify or make a statement in writing or send the document for investigation or using for being an evidence of consideration of Competent Officer

In the performance of the duties in paragraph one the other person involved must give appropriated facility.

\textsuperscript{161} The draft of the Council of State No.1087/2559, s 28
CHAPTER 4
LEGAL MEASURE TO CONTROL THE MARKETING OF BREAST-MILK SUBSTITUTEs IN FOREIGN LAW

Between 1979 and 1981 WHO, UNICEF, the nongovernmental organizations, infant food industry and experts on infant feeding meet to develop the International Code of Marketing of Breast-milk Substitutes and protect breastfeeding as the minimum standard to restrict the aggressive marketing of breast-milk substitutes and promoting and supporting breastfeeding through the meaningful legislation.

Under Article 11.1 of the Code, it required that countries should “take action to give effect to the principles and aim of this Code as appropriate to their social and legislative framework, including to adoption of national legislation, regulations or other suitable measures”

WHA Resolution 34.22, in which the Code is adopted, stresses the adoption of and adherence to the Code is a minimum requirement for all countries, and urges all countries to implement it “in its entirety”

In the European Union, the regulation controlling with the marketing of breast-milk substitutes are the European Commission Directive 2006/141/EC on Infant Formula and Follow-on Formula (Directive),\(^{162}\) the European Union Regulations 609/2013 of the European Parliament and of the council on food intended for infants and young children, food for special medical purpose, and total diet replacement for weight control and the Supplementing the Regulations No.609/2013 as regard the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young children feeding.\(^{163}\)

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\(^{163}\) Commission Delegated Regulations (EU) 2016/127 of 25 September 2015, Supplement Regulations No.609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirement on information relating to infant and young child feeding.
In the United Kingdom, the Infant Formula and Follow-on Formula Regulations 2007 is announced to implement to the Directive 2006/141/EC. These regulation contain the provisions relating to the notification of infant formula, composition, advertising of infant formula and follow-on formula, presentation in so far as it related to the way in which infant formula and follow-on formula are arranged and the setting in which they are displayed, the avoidance of risk of confusion between infant formula and follow-on formula in relation to labelling, presentation and advertising.

In the Philippine, this country fully implement to the International Code of Marketing of Breast-milk Substitutes by provide the Executive Order No.51 which aim to contribute to the provision of safe and adequate nutrition for infants by the protection and promotion of breastfeeding and by ensuring the proper use of breast-milk substitutes and breast-milk supplements when these are necessary, on the basis of adequate information and through appropriate marketing and distributions.\(^{164}\)

### 4.1 The European Union Regulations and the Directive

The Directive 2006/141/EC on Infant Formula and Follow-on Formula and the European Union Regulations 609/2013 aims to provide better protection for the health of infants, the rules of the composition, labelling and advertising laid down are provided in conformity with the principles and the aims of the International Code.\(^{165}\) They give criteria for compositional such as energy, protein, carbohydrate, fat and certain other ingredients where necessary, minimum and maximum levels.

However, the Directive 2006/141/EC on Infant Formula and Follow-on Formula is repealed with effect from 22 February 2020 by the European Union Regulations 609/2013.

Therefore, the author will mentioned both of Directive 2006/141/EC and the European Union Regulations 609/2013 simultaneously.

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\(^{164}\) Executive Order No.51, s 2  
\(^{165}\) Commission Directive 2006/141/EC, para 27
4.1.1 The controlling of the advertising and the marketing

Because the advertising directly to the consumer and the other marketing techniques influence parents and caregivers in their decision on how to feed their infants. Thus, in order to protect the health of infant, the regulation concerning with labelling, advertising, presentation and promotional and commercial are laid down the regulation conform to the principles and the aims of the International Code of Marketing of Breast-milk Substitutes as follows:

(1) Advertising of infant formula shall be restricted to publications specializing baby care and scientific publications. Such advertising shall contain only information of a scientific and factual nature. Such information shall not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding\(^{166}\)

(2) There shall be no point of sale advertising, giving of samples other promotional device to induce sales of infant formula directly to the consumer at the retail level such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales. However, the restriction is not cover the follow on formula.\(^{167}\)

(3) Manufactured an distributors shall not provide to general public or to pregnant women, mother or members of their families, free or low-priced products, samples or any other promotional gifted, either directly or indirectly via health care system of health workers.\(^{168}\)

(4) Donations or low-price sales of supplies of infant formula to institutions or organizations, whether for use in the institutions or for distribution outside them, shall only be used by or distributed for infants who have to be fed in infant formula and only for as long as required by such infants.\(^{169}\)

\(^{166}\) Supplementing Regulation (EU) No. 609/2013, art 10 para 1 and Commission Directive 2006/141/EC, art 14 para 1  
\(^{169}\) Supplementing Regulation (EU) No. 609/2013, art 10, para 4
4.1.2 The controlling of the label

4.1.2.1 The statement on label

Infant formula and follow-on formula are sophisticated products that specifically formulated for a vulnerable group of consumers. 170 Thus, Directive 2006/141/EC Article 13 and Supplementing Regulations No.609/2013 Article 6 require for the composition including requirements on energy, value, macronutrient and micronutrient and require for the statement on label in each product as follows:

a. Infant formula

(1) A statement that the product is suitable for particular nutritional use by infants from birth when they are not breastfed 171

(2) Instruction for appropriate preparation, storage and disposal of product and warning against the health hazards of inappropriate preparation and storage.

(3) Statement concerning the superiority of breastfeeding and a statement recommending that the product be used only on advice of independent persons having qualifications in medicine, nutrition or pharmacy, or other professionals responsible for maternal and child care. The particulars referred to in this point shall be preceded by the word “Important Notice” or their equivalent and shall be given also in the presentation and advertising of infant formula.

b. Follow-on formula

(1) A statement that the product is suitable only for particular nutritional use by infants over the age of six months, any exception to six months of age, should be made only on advice of independent persons having of

170 Supplementing Regulation No.609/2013, para 5
qualifications in medicine, nutritional pharmacy, or other professionals responsible for mental and child care.\textsuperscript{172}

(2) Instruction for appropriate preparation, storage and disposal of product and warning against the health hazards of inappropriate preparation and storage.

\textbf{4.1.2.2 The design of the labelling and presentation of infant formula and follow-on formula control}

The European Union Regulations 609/2013 required that the labelling, presentation and advertising of infant formula and follow-on formula have to be designed so as not to discourage breastfeeding as follows:\textsuperscript{173}

\begin{enumerate}
\item The labelling, presentation and advertising of infant formula and follow-on formula shall provide the necessary information about the appropriate use of the products so as not to discourage breastfeeding.
\item The labelling, presentation and advertising of infant formula and follow-on formula shall not use of terms “humanized”, “maternalised”, “adapted” or similar terms
\item The labelling, presentation and advertising of infant formula and follow-on formula shall be designed in such way that it avoids any risk of confusion between infant formula and follow-on formula and enables consumers to make a clear distinction between them, in particular as to text, images and colours used.
\end{enumerate}

\textbf{4.1.3 The controlling of health care system and health worker}

The European Union Regulation No.609/2013 restrict only the manufacturer or distributor of any infant formula to promote to provide for promotional purposes any infant formula free or at a reduced or discounted price, or any gift designed to promote the sale of an infant formula either directly, or indirectly through the health care system or health worker. And impose the sanction to them.

\textsuperscript{172} Supplementing Regulation No.609/2013, art 6, para 3 and Commission Directive 2006/141/EC, art 13
\textsuperscript{173} Supplementing Regulation No.609/2013, art 10
While this regulation does not restrict or impose any sanction to the health worker who receive benefit from the manufacturer or give samples of infant formula to pregnant women, mothers or member of their families

4.2 The United Kingdom

In the United Kingdom, the law concerning with the marketing of breast-milk substitutes is the Infant Formula and Follow-on Formula Regulations, (England) 2007. This regulation has implemented to the Directive 2006/141/EC of 22 December 2006 and partial implement to the International Code.

In order to help industry, enforcement officers and other interested parties interpret the provision of the Infant Formula and Follow-on Formula Regulations, 2007, the Department of Health in association with the welsh Government, and the Food Standards Agency Scotland and Northern Ireland has provided the Department of Health Guidance Noted on the Infant Formula and Follow-on Formula Regulations 2007.

This DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007 focus mainly on the provisions of the Infant Formula and Follow-on Formula Regulations, 2007 which relate to labelling, notification, avoidance of risk of confusion between infant formula and follow-on formula, advertising, promotion, and the provision of information and education relating to infant and child feeding. It is the Department of Health view on how the regulations should be interpreted.

175 The Regulations specify rules on the compositional labelling and advertising of infant formula and follow-on formula.
176 The Directive also gives effect to the principles and aims of the 1981 WHO Code on the Marketing of Breast-milk Substitutes dealing with marketing, information and responsibilities of health authorities. The Directive regulates labelling and restricts advertising and presentation of infant and follow on formula so as not to discourage breastfeeding.
The authors will explain the Infant Formula and Follow-on Formula Regulations, (England) 2007 and DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007 simultaneously in the issue that the DH Guidance Notes has focused.\textsuperscript{178}

\subsection*{4.2.1 The controlling of the advertising and the marketing}

Under this regulation, the infant formula and follow-on formula are controlled to advertise while only infant formula are control to make the promotion.

\textbf{4.2.1.1 Restriction on advertising}\textsuperscript{179}

Both of the Infant Formula and Follow-on Formula Regulations 2007 and the DH Guidance Notes state about advertising in the detail as follows:

\textbf{a. The Infant Formula and Follow-on Formula Regulations 2007}

\begin{itemize}
\item (1) Restriction on advertising of infant formula
  \begin{itemize}
  \item (1.1) No person shall advertise infant formula
    \begin{itemize}
    \item (1.1.1) except in scientific publication, or for the purposes of trade prior to the retail stage, in a publication of which the intended readership is other than the general public
    \item (1.1.2) unless the advertisement complies with the provisions of regulation of label in regulation 17(1)(e)(e), (2), (3) and (4) and the avoidance of the risk of confusion between the infant formula and follow-on formula in regulation 19.
    \end{itemize}
  \end{itemize}
  \item (1.2) Advertisements for infant formula shall only contain information of a scientific and factual nature.
\end{itemize}

\textsuperscript{178} ibid.
\textsuperscript{179} Infant Formula and Follow-on Formula Regulation 2007, reg 21
(1.3) Information in advertisements for infant formula shall not imply or create a belief that bottle feeding is equivalent or superior to breast feeding.

(2) Restriction on advertising of follow-on formula\textsuperscript{180}

The advertisement of follow-on formula which contravenes or fails to comply with the requirement on labeling in regulation 18(2) and requirement to avoid the risk of confusion between infant formula and follow-on formula in regulation 19 are prohibited.

\textbf{b. The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007}\textsuperscript{181}

(1) Restriction on advertising of infant formula

(1.1) The manufacturer should ensure that

(1.1.1) infant formula is advertised only in scientific publications or for trade purpose

(1.1.2) consumers recognize that advertisements for follow on formula relate exclusively to products for older babies and not infant formula. Such advertisements should not directly or indirectly, infant formula, or formula milk/bottle-feeding in general.

(1.2) The advertising should not

(1.2.1) promote a range of formula products by making the brand the focus of the advert, rather than scientific products

(1.2.2) feature text or images which relate to pregnancy or the feeding or care of infant under six months

(1.2.3) include pictures or text which directly or indirectly relate or compare products to breast milk

\textsuperscript{180} Infant Formula and Follow-on Formula Regulation 2007, reg 22

\textsuperscript{181} DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 47, 48 and 49
(1.2.4) focus on cares emotions in relation to the feeding or care on infant under six months

(1.2.5) focus primarily on the promotion of ingredients, or the effect of ingredients, which are common to both follow on and infant formula.

(1.3) The companies need to ensure that carelines, websites or mother and baby clubs. And any advertisements for the means of communication, supply only factual information to consumers and health care professionals.

(1.4) Advertising on relation to the appropriate use of so as not to discourage breastfeeding. $^{182}$

Regulations 21(b) and 22 of restriction apply regulation 17(2) and 18(2) in relations to infant formula and follow-on formula advertising. Thus, the advertisement of these kind of product must provide the necessary information about the appropriate use of the products which not discourage breastfeeding and must not contain terms such as ‘humanised’, ‘maternalised’ or ‘adapted’.

Non mandatory text or pictures on infant formula and follow on formula labeling must not take reference to “breast-milk”, “breastfeeding”, “moving on from breastfeeding” or close to/inspires by breast-milk”.

(1.5) The use of pictures of infants or any other picture or text which may idealise the use of the product.$^{183}$

(1.6) Ensuring that there is a clear distinction between advertisements for infant formula and follow-on formula

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$^{182}$ DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 58

$^{183}$ DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 60
(2) Restriction on advertising of follow-on formula

The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 has required for appropriate labeling on infant formula and follow on formula\textsuperscript{184}, the general guidance with regard to advertising, Avoidance of the risk of confusion between infant formula and follow-on formula.\textsuperscript{185} In addition, in case of follow-on formula companies should follow the detail as follows:\textsuperscript{186}

- (2.1) In advertisements for follow-on formula, the term “follow-on formula” should feature conspicuously, in a font size similar to the main copy of the advertisement. The font size of the term “follow-on formula” should be no smaller than the brand name. The term “follow-on formula” should not feature solely in.

- (2.2) The text of “Importance Notice” where provided or pictures of follow-on formula packaging which are featured in the advertisement.

- (2.3) Picture of follow-on formula packaging which are featured in advertisement

- (2.4) The inclusion of the information below in any follow-on formula advertisement may help consumer understand that it relates exclusively to follow-on formula and does not relate to infant formula
  
  - (2.3.1) Follow-on formula is suitable only for particular nutritional use by infants over the age of six months
  
  - (2.3.2) A clear indication that any infants featured in follow-on formula advertisements are over six months

- (2.5) The colour scheme of any follow-on formula advertisements should clearly differ from the used in infant formula advertisements

\textsuperscript{184} DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 28

\textsuperscript{185} DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 47-50

\textsuperscript{186} DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 70
(2.6) To minimize the risk of consumers making a connection between any follow-on formula and the act of feeding infant from birth, information in advertisements for follow-on formula should not include pictures or text which relate or compare any follow-on formula to breast milk.

4.2.1.2 Restriction of promotion of infant formula

a. The Infant Formula and Follow-on formula Regulations 2007

This regulation imposes restrictions on the promotion of infant formula as follows:

(1) “No person shall at any place where any infant formula is sold by retail

(1.1) advertise any infant formula;

(1.2) make any special display of an infant formula designed to promote sales;

(1.3) give away—

(1.3.1) any infant formula as a free sample, or

(1.3.2) any coupon which may be used to purchase an infant formula at a discount;

(1.4) promote the sale of an infant formula by means of premiums, special sales, loss-leaders or tie-in sales; or

(1.5) undertake any other promotional activity to induce the sale of an infant formula.”

(2) “No manufacturer or distributor of any infant formula shall provide for promotional purposes any infant formula free or at a reduced or discounted price, or any gift designed to promote the sale of an infant formula, to—

(1.1) the general public;

(1.2) pregnant women;

(1.3) mothers; or

(1.4) members of the families of persons mentioned in sub-paragraphs(b) and (c), either directly, or indirectly through the health care system or health workers.”
b. The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007

The DH Guidance Notes laid down the restriction to promote infant formula in paragraph 71-73 as follows:

(1) Regulation 23(1)(b) prohibit “any special display designed to promote sales” the DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007 guide that “Companies should not use prominent shop window displays, free sanding displays or shelf-talker which relate to infant formula products.”\(^\text{187}\)

(2) Regulation 23(1)(d), (e) and 23(2) prohibit “special sales” to promote the sale of an infant formula or any other special activity at any place where any infant formula is sold by retail to induce the sale of an infant formula. For example, multi packs, loyalty/reward card schemes, free formula, price reductions, discounts or mark downs and buy on get one free\(^\text{188}\)

(3) Regulation 23(2) prohibit “the manufacturers or distributors from providing any gift designed to promote the sale of an infant formula to the general public, pregnant women, mothers, and members of their families.” In the Department view this would prohibit such gifts being provided via baby clubs or similar activities.\(^\text{189}\)

4.2.1.3 Restriction of avoidance of the risk of confusion between infant formula and follow-on formula\(^\text{190}\)

The provision of this regulation Article 19 are similar to the Article 13 paragraph 7 of the Directive 2006/141/EC which stated that “Infant formula and follow-on formula shall be labelled in such a way that it enables consumers to make

\(^{187}\) DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 71
\(^{188}\) DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 72
\(^{189}\) DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 73
\(^{190}\) Infant Formula and Follow-on Formula Regulation 2007, reg 19
a clear distinction between such products so as to avoid any risk of confusion between infant formula and follow on formula.”

The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 interpret that “Manufacturers must ensure that infant formula and follow-on formula are labelled in such a way that it enables consumers to make a clear distinction between infant formula and follow-on formula so as to avoid any risk of confusion. Regulations 20(1), 20(2), 21(1)(b) and 22 make this a requirement relating to the presentation and advertising of infant formula and follow-on formula.”

a. Labelling

In the light of this requirement, manufacturers should ensure the following when drafting infant formula and follow-on formula labelling:

“(1) The specific terms ‘infant formula’ and ‘follow-on formula’ should be clearly featured on the packaging, in a font size no smaller than the brand name.

(2) Infant formula and follow-on formula are fundamentally different and information on labels, such as pictures and blocks of text should differentiate between them (Appendix).

(3) The colour scheme used for infant formula packaging should be clearly different to the colour scheme of follow-on formula packaging. Using different shades of the same colour is not acceptable as it may lead to confusion.

(4) Non-mandatory references to breast-milk or breastfeeding should not be made on follow-on formula packaging as consumers may associate these terms with feeding infants from birth, whereas follow-on formula should be used only from six months”

191 DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 50
192 DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 51
b. Presentation

The requirement, prohibition and restriction concerning with label shall also apply in relation to the infant formula and follow-on formula.

For the purpose of this regulations “presentation” includes the shape, appearance or packaging of the products concerned, the packaging materials used, the way in which they are arranged and the setting in which they are displayed.

The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 required that companies must ensure that they are clearly differentiated in order to avoid any risk of confusion and that:

“(1) ‘Shelf-talkers’ (attachments that add a company’s logo or sales message to the edge of a shelf) and other in-store promotional devices for follow-on formula must not be used in the vicinity of infant formula.

(2) Follow-on formula should be located at a different part of the store to infant formula. If this is not possible they should be clearly separated in physical location.”

4.2.2 The controlling of the label

Both of the Infant Formula and Follow-on formula Regulations 2007 and the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 state about labelling in the detail as follows:

a. The Infant Formula and Follow-on Formula Regulations 2007

(1) Labelling of infant formula

Other than the requirement of the available energy value, the average quantity of each mineral substance and of each vitamin and necessary

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193 Infant Formula and Follow-on Formula Regulation 2007, reg 20
194 DH Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, para 53
195 Infant Formula and Follow-on Formula Regulation 2007, reg 17
information providing to the customer, the statement which shall bear on label are as follows:

(1.1) Infant formula can be sold when the labeling bear the following particulars

(1.1.1) a statement to the effect that the product is suitable for particular nutritional use by infants from birth when they are not breastfed
(1.1.2) the available energy value
(1.1.3) the average quantity of each mineral substance and of each vitamin, expressed in numerical form.
(1.1.4) instructions for appropriate preparation, storage and disposal of the product and a warning against the health hazards of inappropriate preparation and storage

(1.2) The labelling of an infant formula shall not include any picture of an infant or any other picture or text which may idealise the use of the product, but may include graphic representations for easy identification of the product or for illustrating methods of preparation.

(1.3) The labeling of infant formula may bear nutrition and health claims only when it reach the Annex IV and expressed in the terms set out there.

(2) Labelling of follow-on formula

Rather than the requirement of the available energy value, the average quantity of each mineral substance and of each vitamin and necessary information providing to the customer, the statement which shall bear on label are as follows:

Follow-on formula can be sold when the labeling bear the following particulars,

(2.1) A statement to the effect that

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196 Infant Formula and Follow-on Formula Regulation 2007, reg 18
(2.1.1) the product is suitable only for particular nutritional use by infants over the age of six months,

(2.1.2) it should form only part of a diversified diet,

(2.1.3) it is not to be used as a substitute for breast-milk during the first six months of life and the decision to begin complementary feeding, including any decision as to making an exception to the principle of not using follow-on formula before six months of age, should be made only on the advice of independent persons having qualifications in medicine, nutrition or pharmacy, or other professionals responsible for maternal or child care, based on the individual infant’s specific growth and development needs.

(2.2) Instructions for appropriate preparation, storage and disposal of the product and a warning against the health hazards of inappropriate preparation and storage.

b. The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007

(1) Labelling of infant formula

In the issue of labeling of infant formula, the manufacturers are encourage to clearly state the age range that the product is suitable for on the front of packaging. The font size for the age range declaration should be no smaller than that used for the term ‘infant milk’ or ‘infant formula’ on the front of packaging.

(2) Labelling relating to the preparation, storage and disposal of infant formula and follow-on formula

(2.1) Appropriate preparation, storage and disposal of products are required by regulation No. 17(1)(d) and No.18 (1)(d) of the DH Guidance Notes of Infant Formula and Follow-on formula Regulations 2007 recommends that these instructions should include information noting that:

\[197\text{ DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 22}\]

\[198\text{ DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 24}\]
(2.1.1) powdered infant formula and follow on formula are not sterile, and as such can contain harmful bacteria. Therefore it is important to be very careful when preparing formula to reduce the risks. Boiled tap water cooled for no more than 30 minutes should be used to prepare infants feeds.

(2.1.2) All equipment used for feeding and preparing feed must be thoroughly cleaned and sterilized before use, and bottles should be made up fresh for each feed, as storing made up formula milk may increase the chance of a baby becoming ill.

(2.2) A warning against the health hazards of inappropriate preparation and storage are also required by Regulation No.17(1)(d) and No.18 (1)(d)\(^\text{199}\)

The statement about a warning against the health hazards of inappropriate preparation and storage should stress the importance to the baby health of the correct preparation of the infant formula without which there is an increased risk of the baby suffering from serious stomach upsets, diarrhea etc. This statement should appear on the label in a conspicuous place and be clearly visible and easily understandable. The statement should include wording such as “Failure to follow instructions make your baby ill”

(3) Labelling relating to the “Importance Notice” requirement\(^\text{200}\)

Regulation No.17 (1)(e) infant formula required the importance notice on the labeling and should be afforded a high degree of prominence. It should be clearly visible and understandable.

(4) Labelling about the appropriate use of infant formula and follow-on formula so as not to discourage breastfeeding\(^\text{201}\)

\(^{199}\text{DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 26}\)

\(^{200}\text{DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 27}\)

\(^{201}\text{DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 28,29}\)
The necessary information about the appropriate use of the products are required by regulations No. 17(2) and No. 18(2) on the labeling of infant formula and follow on formula.

The labeling about the appropriate use of infant formula and follow on formula so as not discourage breastfeeding. Non mandatory text or pictures on infant formula and follow on formula labeling must not take reference to “breast-milk”, “breastfeeding”, “moving on from breastfeeding” or close to inspires by breast-milk”.

(5) Labelling of infant formula to avoid idealizing the product

The DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 provide an example of representations which may be considered to “idealise” the use of infant formula should they feature on infant formula labeling:

(5.1) Pictures of infants, young children or carers
(5.2) Graphics that represent nursing mothers and pregnant women.
(5.3) Pictures or text which imply that infant health, happiness or well-being, or the health, happiness and wellbeing of carers, is associated with infant formula.
(5.4) References to infant’s or carer’s emotions
(5.5) Baby or child related subjects (e.g. toys, cots or young animals) and anthropomorphic character, pictures and logos.
(5.6) Non-mandatory pictures or text which refers, directly or indirectly, to ‘the idea method’ of infant feeding.
(5.7) Labelling of follow-on formula

DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 31
As same as the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 on regulation No.17 about labelling of infant formula, the manufacturers must clearly state the age range that the product is suitable for on the front of the packaging. The font size for the age range declaration should be no smaller than that used for the term ‘follow-on milk’ or ‘follow-on formula’ on the front of packaging.²⁰³

Further, the statement which are required by regulation No.18(1)(a) on follow-on formula labeling should be afforded a high degree of prominence on the label. It should be clearly and understandable.²⁰⁴

4.2.3 The controlling of health care system and health worker

The Infant Formula and Follow-on Formula Regulation 2007 restrict only the manufacturer or distributor of any infant formula to promote to provide for promotional purposes any infant formula free or at a reduced or discounted price, or any gift designed to promote the sale of an infant formula either directly, or indirectly through the health care system or health worker. And impose the sanction to them. While this regulation does not restrict or impose any sanction to the health worker who receive benefit from the manufacturer or give samples of infant formula to pregnant women, mothers or member of their families.

4.2.4 The enforcement²⁰⁵

This regulation provide that any person who contravenes or fails to comply with specified regulations is guilty of an offence and provide a penalty for contravening or failing to comply with the regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5²⁰⁶ on the standard scale.

²⁰³ DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 37
²⁰⁴ DH Guidance Notes of Infant Formula and Follow-on Formula Regulation 2007, para 38
²⁰⁵ Infant Formula and Follow-on Formula Regulations 2007, reg 28
²⁰⁶ Fine of Level 5 is not exceeding £5,000
4.3 The Philippines

The Philippine are strongly aligned to International Code of Marketing of Breast-milk Substitutes by providing the Executive Order No. 51 to enforce with the marketing of breast-milk substitute.

4.3.1 The controlling of the marketing and advertising

The related provision of controlling of marketing of breast-milk substitutes products of the Philippines is the Executive Order No. 51 section 6 “The General Public and Mothers” are as follows:

“a. Before advertise, promote or do the other marketing materials, whether written, audio or visual, for products within the scope of this code shall be printed, published, distributed, exhibited and broadcast, the manufacturer must be allowed by an inter-agency committee created herein pursuant to the applicable standards provided for in this Executive Order.

b. Manufacturers and distributors are directly or indirectly prohibited to give, samples and supplies of products within the scope of this Code or gifts of any sort to any member of the general public, including members of their families, to hospitals and other health institutions, as well as to personnel within the health care system, save as otherwise provided in this Executive Order.

c. The point-of sale advertising, free of samples or any other promotion devices to induce sales directly to the consumers at the retail level, such as special displays, discount coupons, premiums, special sales, bonus and tie-in sales for the products are prohibited within the scope of this Executive Order. However, the prohibition does not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis.

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d. Any gifts or articles or utensils provided by the Manufacturers and distributors which may promote the use of breast-milk substitutes or bottle feeding are prohibited to distribute to pregnant women or mothers of infants.”

4.3.2 The controlling of the label

The infant formula products containers and/or labels have to meet the standard of this Executive Order as provide in section 10 as follows:

“a. The design shall compose of necessary information about the appropriate use of the products, and not to discourage breastfeeding.

b. A clear, conspicuous and easily readable and understandable message in Pilipino or English printed on it, together with message that cannot readily become separated from it as follows:

(1) the words “Important Notice” or their equivalent;
(2) a statement of the superiority of breastfeeding;
(3) a statement that the product shall be used only on the advice of a health worker as to the need for its use and the proper methods of use; and
(4) instructions for appropriate preparation, and a warning against the health hazards of inappropriate preparation.

c. Any pictures or texts which may idealize the use of infant formula are prohibited on containers nor the label. They may, however, have graphics for easy identification of the product and for illustrating methods of preparation.

d. The term of “humanized,” “maternalized” or similar terms cannot be used.

e. Food products within the scope of this Executive Order marketed for infant feeding, which do not meet all the requirements of an infant formula but which can be modified to do so, shall carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant.”

4.3.3 The controlling of health care system and health worker

This Executive Order No. 51 imposes the duty to the related person in the health care system as follows:

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208 Executive order No.51, s 7
“a. To encourage and promote breastfeeding is the responsibility of The Ministry of Health, he has to take an appropriate measures to support breastfeeding.

b. Facility of the health care system for the purpose of promoting infant formula or other products is prohibited.

c. Facilities of the health care system to use the display of products or placards or posters concerning such products are prohibited.

d. The health care system are prohibited to use “professional service” representatives, “mother crafts nurses” or similar personnel, provided or paid for by manufacturers or distributors.

e. In health education classes for mothers and the general public, health workers and community workers shall emphasize the hazards and risks of the improper use of breast-milk substitute particularly infant formula. Feeding with infant formula shall be demonstrated only to mothers who may not be able to breastfeed for medical or other legitimate reasons”

The responsibility of health worker to promote breastfeeding provided in section 8 as follows:

“a. They have to encourage and promote breastfeeding and have to make themselves familiar with objective and consistent information on maternal and infant nutrition, and with their responsibilities under this Executive Order.

b. Information provided by manufacturers and distributors to health professionals regarding products within the scope of this Executive Order shall be restricted to scientific and factual matters, and such information shall not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding. It shall also include the information specified in Section 5.

c. The manufacturers or distributors are prohibited to offer financial or material inducements in order to promote products within the scope of this Code to health workers or members of their families, nor shall these be accepted by the health workers or members of their families, except as otherwise provided in Section 8(e).
d. Samples of infant formula or other products within the scope of this Executive Order or of equipment or utensils for their preparation on or use are prohibited not be provided to health workers except when necessary for the purpose of professional evaluation or research in accordance with the rules and regulations promulgated by the Ministry of Health. The health workers cannot give any examples of infant formula to pregnant women and mothers of infants or members of their families.

e. Manufacturers and distributors of products within the scope of this Executive Order may assist in the research, scholarships and continuing education, of health professionals, in accordance with the rules and regulations promulgated by the Ministry of Health.”

4.3.4 The enforcement

Section 13 of the Executive Order 51 state that “If any person violates the provisions of this Executive Order or the rules and regulations issued pursuant to this Executive Order, they have to be punished by a penalty of two (2) months to one (1) year imprisonment or a fine of not less than One Thousand Pesos (1,000.00) nor more than Thirty Thousand Pesos (30,000.) or both. They should the offense be committed by a juridical person, the Chairman of the Board of Directors, the president, general manager, or the partners and/or the persons directly responsible therefore, shall be penalized”

Further, any license, permit or authority issued by any government agency to any health worker, distributor, manufacturer, or marketing firm or personnel for the practice of their professional or occupation, or for the pursuit of their business, may, upon recommendation of the Ministry of Public Health, be suspended or revoked in the event of repeated violations of this Code, or of the rules and regulations issued pursuant to this Code.
CHAPTER 5

ANALYZING THE LEGAL CONTROL OF MARKETING OF BREAST-MILK SUBSTITUTE IN THAILAND

According to the fact, there is no direct legislation to control the marketing of breast-milk substitutes in Thailand. Subsequently, manufacturers and distributors widely violate the International Code.

In this chapter, the author will analyze the problems concerning the lack of legal control on the marketing of breast-milk substitutes as well as the loophole in legal system.

Furthermore, the author will analyze the current legal control of advertising and marketing of food under the Food Act B.E.2522 and the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008 together with the draft from the Department of Health and the draft from Council of State No.1087/2559. By the comparative analysis, the thesis analyzes the current legal control in Thailand through the comparison of the International Code, the Guidance on Ending the Inappropriate Marketing of Food for Infant and Young Children, the Regulation of the European Union, the Regulation of the United Kingdom and the law of the Philippines in the issue as follows:

5.1 The problem of scope of protection

The International Code of Marketing of Breast-milk Substitutes specify the scope of protection of the marketing control to the following products: breast-milk substitute products, including infant formula; other milk products, food and beverages, including bottle-fed complementary foods. There are variously suitable methods marketing or representing regarding with or without modification, for a partial or total replacement of breast-milk such as feeding bottle. However, the International Code of Marketing of Breast-milk Substitutes does not mention to the age of infant or young children products. While the Guidance on Ending the Inappropriate Promotion of Food for Infants and Young Children requires to ensure that all milk products intended and
marketed as suitable for feeding young children up to the age of 3 years, including growing-up milk are adequately covered by national legislation.

In foreign countries, the Philippines, in spite of its full-implementation of the International Code, the scope of protection in the country covers only an infant which means “a person falling within the age bracket of 0-12 months.”

The European Union Regulation 609/2013 and Infant Formula and Follow-on Formula Regulations 2007 define ‘Infant’ and ‘Young children’ in the same definition. ‘Infant’ means a child under the age of 12 months and ‘Young children’ means a child aged between one and three years.

The products under the control of the European Union Regulation 609/2013 and Infant Formula and Follow-on Formula Regulations 2007 are infant formula and follow-on formula. According to the compulsory statement of the label of each product, ‘Infant formula’ is suitable for newborn infants if they are not breastfed naturally while ‘follow-on formula’ is only suitable for infants aged over six-month old.

The European Union Regulation 609/2013 and the Infant Formula and Follow-on Formula Regulations 2007 allow the follow-on formula which is marketed to be advertised and promoted for babies from the age of 6 months. This product was introduced to circumvent restricted on marketing prior to 6 months. The follow-on formula advertising is currently used to promote the infant formula through the same branding, logos or styling as the follow-on and other milk or baby foods.

In Thailand, both of the draft law from the Department of Health and the draft law from the Council of State No.1087/2559 intend to protect 0-12 months old infant and young children at the age of 1-3 years old. Therefore, the scope of both drafts to protect infant and young children up to the age of 3 years old conforms to the recommendation of the Guidance on Ending the Inappropriate Promotion of Food for Infants and Young Children.

However, there are the dissenting opinion of the Pediatric Nutrition Manufacturer Association (PNMA) that the scope of controlling should cover to only infant from one day old – 1 years old.
The PNMA, composed of 7 companies who produce and distribute breast-milk substitute products in Thailand, has argued that 'The scope of the draft to control the marketing should have the scope only for infants since one day old to 12 months old and not including young children since 1 – 3 years old'. Because, in order to support infant at every level to gain the appropriate nutrition and conform with the growing of their body and brain and to be the way to give an information of nutrition for infant and young children after 6 months old that WHO recommends to exclusive breastfeeding. Furthermore, the scope of the draft should not cover the bottle complementary food.”

The PNMA expresses the opinions that the recommended products, such as follow-up formula infant food for infants and young children, complementary food, or UHT milk products for infants over 12 months old, should cautiously provide useful information to customers. In relation to the useful information, the PNMA will cooperate with the governmental organizations on the issue of necessary nutrition for infants and young children. In addition, it is also crucial to specify the science data on statements of each product without any exaggeration.

In light of the rationale, there is a reason to support that the draft should cover only products for infant from one day old to 12 months as the PNMA’s proposal. The supporting ideas are partially accompanied with the recommendation of WHO which advocates that “Exclusive breastfeeding is recommended up to 6 months of age, with continued breastfeeding along with appropriate complementary foods up to two years of age or beyond.”

The PNMA premises that “Exclusive breastfeeding is recommended up to 6 months of age, and continued breastfeeding along with appropriate complementary foods at least to 1 year”. This premise is not fully conformed to the recommendation

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of WHO that recommends to “continue breastfeeding along with appropriate complementary foods up to two years of age or beyond.”

In relation to the argument, the current thesis would argue the PNMA’ reason. Regarding the issue of consumers’ acknowledgement on the nutritional information of products, manufacturers are supposed to introduce the nutritional information relating to the products without limiting the scope of age within 12 months. For example, the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and its revision (No.2) B.E.2555 (2012) allow the food for infant and young children to be advertised even though it is a dissemination of technical information and knowledge in medical journal which is limited to doctor of medicine, nurse, midwives or nutritionist.

Consequently, consumers are able to acknowledge the necessary information about the nutrition which infant and young children should acquire in each age. Correspondingly, when it comes to the issue of technical information and knowledge in medical journal for doctor of medicine, nurse, midwives or nutritionist, manufacturers are supposed to disseminate the necessary information and knowledge to the consumers without concerning about the limitation of age.

Moreover, the draft of controlling of marketing of breast-milk substitutes controls does not prohibit the manufacturers or distributors to sell-their products. On the contrary, it just prohibits an advertising and marketing instruments to support and protect breastfeeding from aggressive marketing.

In relation to the scope of infants’ ages from one day to 12 months old, if the draft of controlling of marketing of breast-milk substitutes in Thailand follows the opinion of the PNMA, there is nothing to change from the current situation because the current legal control of advertisement under the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 allow product which a label specified the targeted age of children who are more than 1 year old to advertise under the condition. Under the scope of only 12 months old, the manufacturer can continue to advertise and promote their product through it No.3 milk for babies of 12 months as the cross promotion technique. Even if there are the provision to enforce the targeted
marketing with the scope of 12 months, it will not be effective in practical because the manufacturer can use the gap of the age by adapting to an advertisement to continue promote their product.

Moreover, if the draft covers to the scope of only 12 months old, it will not conform to the recommendation of WHO and the Guidance on Ending the Inappropriate Promotion of Food for Infants and Young Children. With reference to the recommendation, WHO states that any milk product marketed or presented as a suitable partial or total replacement of the breast-milk portion of the infant’s or young child’s diet falls under the scope of the International Code \(^{212}\). With reference to the Guidance on Ending the Inappropriate Promotion of Food for Infants and Young Children, it also suggests that a breast-milk substitute should include all milk products intended and marketed as suitable for feeding young children up to the age of 36 months, including growing up milks. As a result, when the draft scopes for only 12 months old product, the follow-up formula, growing-up milk and related products can be continually advertised and promoted. This means the draft will contradict to both of the recommendation of WHO and the Guidance on Ending the Inappropriate Promotion of Food for Infants and Young Children.

Thus, the author agreed to specify the scope of protection to products up to 3 years. When the draft of controlling the marketing of breast-milk substitute are enforced as the legislation, it will cover to the product which intend to feed infants and young children for up to 3 years conforming to the Guidance on Ending the Inappropriate Promotion of Food for Infants and Young Children

5.2 The measures to control the advertising and the marketing of breast-milk substitutes in Thailand

As the above-mentioned, the International Code of Marketing of Breast-milk Substitutes recommended that “There should be no advertising or other form of promotion to the general public of products including point-of-sale advertising, giving

of samples or any other promotional device to induce sales directly to the consumer at the retail level. Marketing personal should not seek direct or indirect contact with pregnant women or with mothers of infants and young children.”

With regard to the part of foreign law and regulation, the Philippines, under the Executive Order No.51, fully implements the International Code of Marketing of Breast-milk Substitutes has required that “There should be no advertising, promotion or other marketing materials, including point-of-sale advertising, giving of samples or any other promotion devices to induce sales directly to the consumers at the retail level such as special displays, discount coupons, premiums, special sales, bonus and tie-in sales for the products”

The European Union Regulation 609/2013 launched the control of the advertisement and sales promotion with only infant formula as follows:

a. Advertising of infant formula shall be restricted to publications specializing in baby care and scientific publications. Such advertisements shall contain only information of a scientific and factual nature. Such information shall not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding.

b. In case of the promotion, “There shall be no point-of-sale advertising, giving of samples or any other promotional device to induce sales of food for special medical purposes developed to satisfy the nutritional requirements of infants directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales.”

In the United Kingdom, the Infant Formula and Follow-on Formula Regulations of 2007 prohibits an advertisement and sales promotion with only infant formula as follows:

a. Advertisements for infant formula shall contain only information of a scientific and factual nature. Such Information in advertisements for infant formula shall not imply or create a belief that bottle feeding is equivalent or superior to breastfeeding.

b. In case of the promotion, this regulation prohibits any special display designed to promote sales, special sales or activities anywhere where any infant
formula is sold through retail method since it may induce the sale of an infant formula. The manufacturers and distributors are prohibited to give away any free samples, and coupons which may be used as a discount to purchase an infant formula.

According to an inappropriate marketing through advertisements, there are different measures. On one hand, the Philippines absolutely prohibits advertisement of infant formula. On the other hand, the European Union Regulation 609/2013 and the Infant Formula and Follow-on Formula Regulations, 2007 of the United Kingdom allow manufacturers to advertise under the condition of advertisements specializing in the baby care and scientific publications which they shall contain only scientific and factual nature.

In case of promotions, all of the foreign laws apply the same method. The European Union Regulation 609/2013, the Philippines, and the Infant Formula and Follow-on Formula Regulations, 2007 of the United Kingdom prohibit a sale promotion for infant formula complying with the International Code of Marketing of Breast-milk Substitutes.

Return to the current situation in Thailand, there are the following two provisions controlling advertisements and promotions in Thailand: (1) the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008; and (2) the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revised (No.2) B.E.2555 (2012)

Firstly, the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008 is the most direct provision enforcing promotional tactics under the marketing instrument. However, it has the status as the regulation of the Ministry of Public Health (MOPH). Accordingly, it only requires a cooperation from the government sector under the authority of the Ministry of Public Health to support and promote breastfeeding. Therefore, this regulation cannot be a practically enforcing tool.

Even if this regulation has its enforcing status as the legislation which can enforce the violation of advertisement or the other marketing strategies, the scope of the regulation covers for only children up to 2 years old. Consequently, the regulation does
not conform to the Guidance on Ending the Inappropriate Promotion of Foods for Infant and Young Children which recommends to cover the product which intend to feed infants and young children for up to 3 years old.

Moreover, this regulation provides the measure control of marketing of breast-milk substitutes which is similar to the International Code of Marketing of Breast-milk Substitutes but it has the status as the regulation of the Ministry of Public Health which does not provide any sanction to violators.

Secondly, the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revision (No.2) B.E.2555 (2012) which the author has already mentioned in chapter 3 (3.2.1.3) can control only the advertisement of food for infant and young children products, but cannot covers the other marketing strategies.

The prohibition of advertising or others forms of promotion of such products to general public is fundamental to the protection of optimal infant and young child feeding. Therefore, it is important that legal measures contain explicit comprehensive provisions that cover all products prescribed in the scope of the International Code of Marketing of Breast-milk Substitutes.

In relation to the prohibition and restricted products, this announcement separates the prohibition of advertisement according to the kinds of products for infants from 0-12 months old unless it is an advertisement for dissemination of technical information in the medical journal or technical knowledge to doctors of medicine, nurses, midwives or nutritionist.

Moreover, it also allows the advertisement for the products which specify age of targeted group for children who are more than one year old under the condition. While in foreign countries, the European Union Regulation 609/2013 and the Infant Formula and Follow-on Formula Regulations, 2007 allow an advertisement of infant formula under the condition to advertise only in baby cares or scientific publications. Such advertisement shall contain only information of scientific and factual nature. Such information shall not imply nor create a belief that bottle-feeding is equivalent or superior to breastfeeding.
Both of the drafts absolutely prohibit the advertisement of food for infant and young children, without any exception as the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 provide. On the contrary, the European Union Regulation 609/2013 or the Infant Formula and Follow-on Formula Regulations, 2007 has opened channel to advertisements with an information of scientific and factual nature.

In the issue of allowance to advertise breast-milk substitute product, the author would agree with the channel opening for advertisement. In order to be the source of information for consumer, advertisements are supposed to contain only information of scientific and factual nature, not the absolute prohibition to advertise as the draft provide. The reason is when there is any conflict of promotions creating by manufacturers, the committee can sensor related information.

According to the high market value of breast-milk substitute product, 25 billion baht together with the research of IHPP show that “The promotion of products influences people’s satisfaction and perception toward the powdered milk feeding in infants”. Especially, through television commercials (78.5%) and personal selling through suggestions by medical and public health personnel (50.8%). It is not surprise why manufacturers made their efforts to make an aggressive marketing with the breast-milk substitute product. According to the various marketing strategies without any legal control, although the manufacturers are effected by the campaign aiming to support breastfeeding or the measures of the government to control the marketing of breast-milk substitute, the manufacturers can continue promote their promotions. If the country approves the draft to be the law, this law will restrict not only the advertisements but also other forms of promotion of designated products to the general public, including promotion methods to contact with or give free samples, support seminars, meetings, and activities to pregnant women and mothers, create the marketing in health care facilities, or provide profitable to health workers.

As a result of passing the draft to be the law, the status of Thailand will be moved from the voluntary which have adopted all or most of the provisions of the code through non-binding measures to be the country who fully implements the International Code of Marketing of Breast-milk Substitutes.
5.3 The measure to control the marketing tactics which cause the risk of confusion to the consumers

With reference to the Guidance to End the Inappropriate Promotion of Foods for Infants and Young Children, the recommendation No. 5 prohibits the cross promotion to promote breast-milk substitutes through indirect promotions of foods for infants and young children. Similarly to the Infant Formula and Follow-on Formula Regulations 2007 of the United Kingdom No.19 which requires the different labels in order to make a clear distinction to consumers between the products. Likewise, the Regulation 609/2013 of the European Union Article 6 also requires the different designs not only on label but also advertisement and presentation to enable consumers to clearly distinguish products, particularly the text, images and colours. Thereby, the Infant Formula and Follow-on Formula Regulations 2007 and the Regulation 609/2013 apply the same concept of a clear distinction to infant formula and follow-on formula.

Moreover, in the case of labeling, the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 paragraph 51 requires the detail that manufacturers should ensure that the labeling have to be designed in an exact way to avoid any risk of confusion of the products.

In case of presentation, the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 paragraph 53 requires that companies must ensure that they (the appearances of the products) are clearly differentiated in order to avoid any risk of confusion and prohibit the shelf-talker and others in store promotional devices for follow-on formula to be used in the vicinity of infant formula. Besides, it requires that the location of follow-on formula should be located separately from where the infant formula is located.

In general market, there are many kinds of breast-milk substitutes and related products together with the descriptions on the labels as follows:

1. No.1 infant formula which is described that it is suitable for 0-12 months old infants.

2. No.2 follow-on formula which is described that it is suitable for 6 months to 3 years old infant and young children.
3. No.3 flavored milk powder/immediately dissolved milk/immediately skimmed milk which are described that they are suitable for infant, aged from 1 year and everyone in families, the label specifying ages of targeted group who are more than one year old.

4. No.4 immediately dissolved milk/immediately skimmed milk which are described that they are suitable for everyone in families.

According to the concept of the avoidance of risk and confusion, the Infant Formula and Follow-on Formula Regulations 2007 and the Regulation 609/2013 apply this concept to infant formula and follow-on formula. While Thailand have already prohibited to advertise both of No.1 and No.2 which are infant formula and follow-on formula respectively as described under the current Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551. However, manufacturers can continue applying the cross promotion as one instrument of marketing through No.3 and No.4 and related product in the same branding, labelling, packaging or styling. Therefore, the author would apply the concept of prevention of the cross promotion with the group of forbidden to advertise or promote product (No.1 and No.2) and the group of permitted to advertise or promote product (growing-up, follow-up milk and related product).

The author would raise the arguments about the current situation in Thailand which there is a lack of the provision of avoidance of the confusion and the provision concerning the advertisement, labeling and presentation as follows:

a. Advertisement

As the author mentioned in chapter 3 that the direct provision controlling the food advertisement is the Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revision (No.2) B.E.2555 (2012). However, this announcement does not call for the different between the No.1/No.2 which are forbidden to advertise and No.3/No.4 which are permitted to advertise under the condition to avoid the confusion of consumers as the Regulation 609/2013 or the
DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 requires the different between infant formula and follow-on formula.

Currently, the announcement only prohibits the advertisement regarding product No.1 and No.2 which manufactures describe on the labels that it is suitable for one day old to 12 months old infants and 6 months to 3 years old infants and young children respectively. However, product No.3 which labels specified ages of target group who are more than one year old and No.4 product which the label specify that suitable for everyone in families can be advertised under the condition which the author mentioned in chapter 3 (3.2.1.3(b)). This announcement has already prohibit to advertise both of No.1 (infant formula) and No.2 (follow-on formula) while No.3 (growing-up, follow-up milk) and related product can be advertise under the condition.

Thus, in the author’s opinion, the concept to prevent the cross promotion and the avoidance of risk of confusion should be applied to the group of forbidden to advertise or promote product (No.1 and No.2) and the group of permitted to advertise or promote product (growing-up, follow-up milk and related product) through the same branding, labelling, logo or styling.

This announcement cannot cover the cross promotion tactics which are made through the same packaging design, branding, labeling, materials used for the promotion to advertise products such as growing-up milk (No.3/No.4), complementary food or milk for mother. For example, manufacturers can promote their infant formula (No.1) through growing-up milk (No.3), milk for mother and related products which have a similar brand name, color scheme used, logos or styling as we can generally be aware through various media.

In Thailand, in order to control the risk of confusion among the products, if the scope of protection can cover only one year old infants, the manufacturer can continue to apply cross promotion tactic by promoting their infant formula product which is forbidden to promote through the product for older children which is allowed.

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213 The Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revised (No.2) B.E.2555 (2012), Specific criteria of food advertising in Chapter 3 (3.2.1.3(b)) Page 64
to promote. For example, the advertisement by Enfa grow on TV that invited consumer to participate in the Enfa future brain, an exhibition about brain of infant and young children, according of the advertisement, in the end of an advertisement it appears that, sponsored by Enfa grow A+ No.3 flavour milk.214

Presently, if the scope of the draft covers the breast-milk substitute products up to 3 years old, the problem of making cross promotion between the infant formula or follow-on formula and growing up milk in the same brand will be eliminated because the scope of control is wider to cover No.3 which labels are specified for children who are more than one year.

Nevertheless, without the concept of prohibition of the cross promotion, the manufacturers can continue creating the related products for young children are older than one year old such as No.4 formula milk in order to promote the group of forbidden to advertise product through, the same branding, labelling, packaging or styling. Thus, when it comes to a wide range of age, the prohibition of cross promotion is still needed no matter how the scopes are specified.

b. Labeling

In case of labeling, the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 requires the font size of specific terms that should be clearly featured on the packaging and its size must not be smaller than the brand name. The different block text and the different of colour scheme can avoid the risk of confusion to the consumers. In this issue, the author would separately analyze the following issues: (1) the presenting name; (2) the pictures and blocks; and (3) the color scheme of formula products.

Firstly, regarding the presenting name, the size of the specific terms on label under Thai law is controlled by the Notification of Ministry of Public Health No.367 Clause 13 (3) and Notification of Ministry of Public Health No.351 Clause 13 (3). It

In light of names of food, it is explicitly clear that the font size of the names which is bigger than the trade name can be understandable than the smaller one. It can assist consumers to differentiate each product. If the Notification of the Ministry of Public Health which controls labels imposes that the font and size of type of food (such as infant formula, follow-on formula, growing-up milk or flavored powder milk) should be no smaller than the trade name following to the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007, it is one of the methods which can decrease the risk of confusion among products.

Secondly, regarding the pictures and blocks of text, the current law controls on label which are the Notification of Ministry of Public Health No.156 (B.E. 2537). This notification requires only the specific statement which provides necessary information about appropriate usages of the product. In addition, such a statement should not discourage breastfeeding as prescribed by Article 9.1 of the International Code of Marketing of Breast-milk Substitutes. However, the current Thai legal control has no provision to control the pictures and block of text on label as the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 which requires for the different block of text and picture between infant formula and follow-on formula which may cause to the risk of confusion among them (Appendix). In this appendix, it provides an example of the position of picture and block of text which may be less likely to make consumers confuse.

With regard to the label control in Thailand, there is still a lack of requirements to control the picture and block of text, it is essential to add the different requirements between the group of forbidden to advertise or promote product (No.1 and No.2) and the group of product which are permitted to advertise or promote in order to reduce the risk of confusion to consumer.
When the Notification of the Ministry of Public Health which controls on label is added the solution to prevent the confusion, it can reduce the risk of confusion through the similar picture and the position of block of text.

Thirdly, regarding the colour scheme used, there is no provision in Thailand mentioned to control the colour scheme used while the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 require that the manufacturer should ensure that “The colour scheme used for infant formula packaging should be clearly different to the colour scheme of follow-on formula packaging. Using different shades of the same colour is not acceptable as it may lead to confusion.” Furthermore, the Regulation of European Union 609/2013 also requires the different designs to avoidance of risk between infant formula and follow-on formula in particular as shown by the text images and colours used.

In Thai general market, without the provision to control the different of colour scheme used, it can be easily found the same and similar colour scheme used with the same branding. However, different ages of infants and young children cause the risk of confusion among infant formula (No.1), follow-on formula (No.2) and flavored milk powder which labels specified age of target group from 1 year up (No.3/No.4). In addition, other related products which are closely resembled cause manufacturers to develop the product differentiation. Nonetheless, the manufacturers can simultaneously use similar advertising and marketing in each category. For example, Dumex and Hi-Q use the same red and blue colour respectively with the same branding on packaging.

When it comes to the issue of the additional provisions, the draft of control the marketing of breast-milk substitutes or legal control on label can be one of the measures to decrease the confusion of the consumer to separate the difference between products through the colour scheme used from a group of formula which are forbidden to advertise or promote. In addition, such a measure is enable to promote the European Union Regulation 603/2013, the Infant formula and follow-on formula 2007 and the DH guidance of Infant formula and follow-on formula 2007.
In conclusion to this section, there are the following four related instruments enforced in foreign countries internationally or domestically: (1) the Guidance to End the Inappropriate Promotion of Foods for Infants and Young Children, (2) the European Union Regulation 609/2013, (3) the Infant formula and follow-on formula Regulation 2007 and (4) the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007. With regard to Thailand as the present case, it is important to the Notification of Ministry of public Health controlling on label or the draft to add the concept of avoidance of risk of confusion in order to assist consumers to easily distinguish products and protect the cross promotion technique of the manufacturer.

c. Presentation

As the author mentioned above that the Guidance to End the Inappropriate Promotion of Food for Infant and Young Children, the European Union Regulation 609/2013 and the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 guide the way to avoid the risk of confusion between infant formula and follow-on formula by means of particular methods as text, images and colour used to enable consumers to clearly distinguish products among them. In the issue of presentation, the current Thai legal control does not mention about how to avoid the risk of confusion by the presentation as provided by the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007. With reference to the guidance, it requires companies’ products to be ensured that they are clearly differentiated in order to avoid any risks of confusion prohibit the shelf-talker and other in store promotional devices for follow-on formula to be used in the vicinity of infant formula. In addition to the differentiation, the guidance also requires that the location of follow-on formula should be located at a different part of the store where the infant formula products are located.

Currently, Thailand does not mention to the risk of confusion through the presentation. Generally, it can be found the shelf-talker with the company’s logo or sale message on a shelf without professional staffs who can recommend the products. Moreover, the group of forbidden to advertise product which are No.1 and No.2 located in the same location on shelf with the grow-up milk and related product. They have the same packaging, labeling, colour scheme used and were not separated and located
physically as the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 has guided. For example, Dumex uses the red colour with the heart picture on label which can convey to love when mother chooses this breast-milk substitutes for her infant, Enfa uses the shelf-talkers conveying to the consumer when they feed her infant with Enfa’s product, it can make her children intelligence, healthy, happiness or well-being.

If the draft is added by the concept of avoidance of risk of confusion through the presentation of the product, it can prevent consumers from being arouse by the shelf talker as the promotional device and the consumers can distinguish the different of product by separating the location.

However, in relation to in-store presentation, this regulation should not enforce with to mini-stores which does not have enough area to locate the product in difficult location. The mini-store who are exempted should grant the pharmacist or the nutritionist to recommend customers in the area of the store in order to make a clear differentiated understanding about the product all the time.

5.4 The measures and sanction to control the health worker

We cannot refuse the fact that the health workers have an essential role to engage in guiding infant feeding practices, encouraging and facilitating breastfeeding, and ensuring mothers and family members have complete information about the benefit of breastfeeding for both infant and mothers.

The International Code of Marketing of Breast-milk Substitutes state that health worker should not accept financial or material inducement or give samples of infant formula to pregnant women and mothers of infants or members of their families.

The Guidance on Ending the Inappropriate Promotion of Foods for Infant and Young Children under recommendation No. 6 state that health worker should not accept free products, samples or reduces-price, gifts or incentive of foods for infant and young children from companies.

In the Philippines under the Executive Order No.51 section 8, mention to health worker following to the International Code of Marketing of Breast-milk Substitutes that health worker should not should not accept financial or material
inducement or give samples of infant formula to pregnant women and mothers of infants or members of their families. Otherwise the health worker who violates the Executive Order No.51 may be suspended or revoked their license, permit or authority in the event of repeated violations.

Currently, Thai law does not emphasize to an essential role of health workers or any prohibition to them in order to support breastfeeding. The provision is focusing only on prohibition of the manufacturer, distributor, importer and their representative to make a promotion than prefer the restriction to the health worker and who have no less important than anyone.

While personal selling through suggestions by medical and health worker (50.8%) has an impact to her decision making of purchasing breast-milk substitutes in Thailand.

Thus, Thailand legal control concerning with health worker should not only impose the duty but also the sanction to them. By following to the Executive Order No.51 of Philippines, the health worker who violated the Executive Order No.51 shall be suspended or revoked their license, permit or authority by the Ministry of Health. Because, the health worker has an important role to consumers’ decision-making process.

According to the draft of the Department of Health, it imposes a sanction to the health worker in the same way to the Executive Order No.51. When a health worker violates to receive financial or material inducements to promote product or giving any samples to pregnant women or mother of infant and young children, they will be notified to their federation to be considered by the Department of Health and their federation has their own authority to consider to the violation. However, the draft from the Council of State No.1087/2559 does not impose any sanction to health worker.

If there is a sanction provided by the draft from the Department of Health to control health worker who have a close relationship with mother and pregnant women, it can protect one of the channel of promoting infant formula product through health worker as an influential person to encourage and support breastfeeding.
5.5 The measure to control an information and the message used to promote breast-milk substitutes

With reference to Article 9.1 of the International Code of Marketing of Breast-milk Substitute labels should provide necessary information about the appropriate use of products and should not discourage breastfeeding as require. According to Article 9.2, it requires clear, conspicuous and easily readable, and understandable message on the container or on label which includes all the following point: (a) the words “Importance Notice” or equivalent; (b) a statement of the superiority of breastfeeding; (c) a statement that the product should be used only on the advice of a health worker as to the need for its use and the proper method of use; (d) instructions for appropriate preparation, and warning against the health hazards of inappropriate preparation. Neither the container nor the label should have pictures of infants. In addition, they should not have other pictures or text which may idealize the use of infant formula.

Firstly, in case of message on label which should provide necessary information about the appropriate use of products and should not discourage breastfeeding following to Article 9. In addition, the Guidance on Ending the Inappropriate Promotion of Food for Infant and Young Children recommend about the message using with the promotion of food for infant and young children that “the message used to promote food for infant and young children should support optimal feeding and inappropriate message should not be included. Messages are conveyed in multiple form, through advertisements, promotion and sponsorship, including brochures, online information and package labels include a statement on the importance of continued breastfeeding for up to two years or beyond”

In light of foreign law, the European Union Regulation 609/2013 Article 11 and the Infant Formula and Follow-on Formula Regulations, 2007 No.24 request to clear and necessary information about breast-milk substitutes as same as the International Code of Marketing of Breast-milk Substitutes’ requirement.

In light of Thailand, the Notification of Ministry of Public Health No.156 and No.157 require the inclusion of a clear message on the superiority of breastfeeding,
and instructions for appropriate preparation, as well as warning against the health hazards of inappropriate preparation of the product as mentioned in chapter 3 (3.2.2.3)\textsuperscript{215} and 3.2.2.4).\textsuperscript{216} Both of the notifications specify the statement to support breastfeeding which conforms to the minimum standard of the International Code of Marketing of Breast-milk Substitute. Furthermore, the draft from the Department of Health also requires a clear message on the superiority of breastfeeding as same as the Notification of the Ministry of Public Health.

Even if the Notification of Ministry of Public Health and the draft have already required the statement of the importance of non-introducing complementary feeding before 6 months of age, it still lacks of the statement on the importance of continued breastfeeding for children who are up to two years or beyond following to the Guidance on Ending the Inappropriate Promotion of Food for Infant and Young Children.

Thus, if there is a prospective way to promote breastfeeding, especially by legal control through label, it should be continue promoting. At least, consumers who choose to purchase breast-milk substitutes will be acknowledge the recommendation by the WHO about breastfeeding. Therefore, the Notification of Ministry of Public Health and the draft should be added the message of supporting optimal breastfeeding into the compulsory statement provided by law. Moreover, the optimal statement should be conveyed in multiple forms not just only on packaged label but through advertisements, promotion and sponsorship, including brochures, online information.

Secondly, for the issue of pictures or text which may idealize to the use of breast-milk substitute product. The International Code of Marketing of Breast-milk substitute recommended that the informational and educational materials should not use any pictures or text which may idealize the use of breast-milk substitutes except a clear information. In

\begin{footnotesize}
\begin{enumerate}
\item The Notification of Ministry of Public Health No.156 (B.E. 2537 (1994)) Re: Modified Milk for Infant and Modified Milk of Uniform Formula for Infant and Small Children in Chapter 3 (3.2.2.3) Page 68
\item The Notification of Ministry of Public Health No.157 (B.E. 2537 (1994)) Re: Food for Infant and Food of Uniform Formula for Infant and Small Children in Chapter 3 (3.2.2.3) Page 69
\end{enumerate}
\end{footnotesize}
addition, the Guidance on Ending the Inappropriate Promotion of Food for Infant and Young Children recommended that messages used to promote food for infant and young children should not include any image, text or other representation. Regarding the image, text or other representation, those which undermine or discourage breastfeeding, make a comparison to breast-milk, or suggest that the product is nearly equivalent or superior to breast-milk cannot use for infants under the age of six months (including references to milestones and stages).

The current Thai legal control on label of infant formula and follow-on formula which are the Notification of Ministry of Public Health No.156 (B.E. 2537) require only the specific statement which provide a clear information about the appropriate usage of the product. Furthermore, the information should not discourage breastfeeding which partially conform to Article 9 of the International Code. However, it has not mention to pictures or text which may idealize the use of breast-milk substitute following to Article 9 of the International Code of Marketing of Breast-milk substitute.

In light of foreign country, pursuant to the Infant formula and follow-on formula Regulation 2007 of United Kingdom, it requires that “The labelling, presentation and advertising of infant formula and the labelling of follow-on formula shall not include pictures of infants or other pictures or text which may idealize the use of such formula, but may include graphic representations for easy identification of the product or for illustrating methods of preparation.” Moreover, the DH Guidance Notes of Infant Formula and Follow-on Formula Regulations 2007 explains that idealizing images include “baby or child related subjects and anthropomorphic characters, pictures and logos.

In light of Thailand, without the requirement of picture or text which may be idealize to use breast-milk substitute, there are pictures which idealize the use of breast-milk substitute products. For example, pictures of mother with young children, graphics that represent nursing mothers and pregnant women, picture or text which imply that infant health, happiness or well-being (e.g. a heart on Dumex and young animal figures) on the or baby or child related subjects (e.g. toys or young animal) and anthropomorphic characters, pictures and logos.
However, the draft from the Department of Health requires that “the message on label should not include any information which induce to use the breast-milk substitute or suggest that the product is equivalent or superior to breast-milk or suitable to feed infant and young children” which conforms to the recommendation of the International Code of Marketing of Breast-milk Substitutes and the Guidance on Ending the Inappropriate Promotion of Food for Infant and Young Children.

If Thailand added the solution to prohibit the picture or text which may idealize to the use of breast-milk substitutes rather than require for only statement through the Notification of the Ministry of Public Health or passing the draft from the Department of Health in part of requirement on label following to Article 9 of the International Code of Marketing of Breast-milk substitute as the author mention above, the country would have more efficient provision legislation to control various marketing strategies used through the picture or text out of the scope of protection.

5.6 The Problem of making a promotion with the other person other than the pregnant, mother in order to get the personal information of the targeted group

The Article 5.5 of the International Code of Marketing of Breast-milk Substitutes prohibits marketing personnel from seeking direct or indirect contact with pregnant women or with mothers of infant.

In the issue of seeking direct or indirect contact with pregnant women or with mothers of infant, the foreign law and regulation do not provide any prohibition of making a promotion with other people apart from the pregnant women and mother who can be the source of personal information of pregnant women or mothers of infant.

According to the draft from the Department of Health and the draft from the Council of State No.1087/2559, there are provisions to restrict manufacturers, importers and distributors from misleading pregnant women and mothers to believe that benefits of infant and follow-on formula are as good as breast milk.

However, the drafts do not cover of the multiple techniques and channels that marketing personnel is being used to reach directly or indirectly to the target group. Therefore, the loophole of the drafts is being used to gather personal information of pregnant women.
and mothers such as name, contact number and the baby due. To get the crucial information, marketing personnel will offer rewards or gifts to anyone rather than pregnant women, mother and her families who is able to provide the information mentioned above to create chance to sell their products in the future. For example, Enfa provides gift voucher to any person who give them five names and personal information of pregnant women or mothers.

Therefore, if the draft is added the scope of protection to prohibit the manufacturer to make the marketing with not only the pregnant women and mothers but also anyone who can give them personal information to be the source of future connection, it can be one of measures to cease the contact between the manufacturer and the targeted group.

5.7 The enforcement with the violation

The Article 11 of the International Code of Marketing of Breast-milk Substitutes states that government should take action to give the principles and aim of the Code including the adoption of national legislation, regulations or others suitable measures. In addition, responsible government agencies must be empowered to monitor compliance with national legal measures, identify the Code violations, and take corrective action when violations are identified, through administrative, legal or other sanctions.

In the Philippines, the Executive Order No.51, imposes both of the imprisonment and fine. If anyone who violates this law, they have to be punished by a penalty of two months to one year imprisonment or a fine of not less than one thousand Pesos nor more than thirty thousand Pesos or both. Furthermore, any license, permit or authority issued by any government agency to any health worker, distributor, manufacturer, or marketing firm or personnel for the practice of their professional or occupation, or for the pursuit of their business, may, upon recommendation of the Ministry of Public Health, be suspended or revoked in the event of repeated violations of this Code, or of the rules and regulations issued pursuant to this Code.

In the United Kingdom, the Infant Formula and Follow-on Formula Regulations 2007 imposes the specific punishment to any person who contravenes or fails to comply with specified regulations is guilty of an offence and provide a penalty for contravening or failing to comply with those regulations about advertising, making
the promotion with infant formula he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000.

In Thailand, in the case of advertising, if anyone violates the law by advertising false or deceptive ad about the quality, usefulness or indication of a food as prohibited in section 40 of the Food Act B.E.2522, he or she shall be liable to imprisonment of not more than 3 years and a fine of not more than thirty thousand Baht or both.

However, in case of making the sales promotions other than advertisement under control of the Food Act, the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008 does not mention about the punishment or sanction to the violator. On the contrary to the law, it is the Regulation provide by the Ministry of Public Health requesting only the cooperation from the governmental health care organization, but does not have any legal binding.

The draft from the Department of Health specifies an administrative punishment to fine for any person who fails to perform according to the law. Moreover, this draft imposes the level of a fine which the manufacturer will be fined accumulatively that counts by the days until the actions against the law would be stop.

The draft from the Council of State No.1087/2559 specifies both of imprisonment and fine to punish any person who fails to perform according to the law per each violation similar to the Executive Order No.51 while the Infant Formula and Follow-on Formula Regulations 2007 imposes only the fine to punish the violator without any imprisonment. However, this draft does not mention about the level of a fine as the draft from the Department of Health mentioned.

If the draft are enforced as the national legislation, not only the violation of advertisement of breast-milk substitute product shall be punished but also the other instrument of marketing which the current law cannot cover such as sales promotion, give free sample of formula, contact with pregnant women or mother that are wide spread violated.

Furthermore, if the level of fine that counts by the days until the actions against the law under section 23 of the draft from the Department of Health is enforced, it will be
more efficient to control the violation of the manufacturer than an exact amount of fine in each violation without level. The reason is the breast-milk substitute product has a large amount of market value. As the author mentioned that global sales of breast-milk substitutes total US$ 44.8 billion per year and are expected to rise to US$ 70.6 billion by 2019.\(^{217}\) While, the market value of breast-milk substitutes in Thailand is 25 billion Baht.

Only the fixed amount of fine without the level along the period of violation may be only a few money comparing with the manufacturer’s profit. An amount of fine should be varied to the large amount of benefit of breast-milk substitute product business, apart from the fixed amount of fine in each violation.

Thus, the author would agree with the issue of imposing of the level of fine as the section 23 of the draft form the Department of Health provides because the fixed fine as imposed by the Philippines, the United Kingdom or the draft from the Council of State No.1057/2559 may be effective to cease the violation behavior. If the draft imposes not only the specific amount of fine but also the level of fine that counts by the days until the actions against the law, it can be more effective to enforce with the violation.

In conclusion, according to the analysis of the legal measure enforcing on the marketing of breast-milk substitutes which are differently provided by the international standards, the foreign laws and regulations, the current enforceable laws and the drafts of Thailand measures, the author would conclude and propose the measures to control the marketing of breast-milk substitutes as the table below:

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<td>The provision require for necessary information on labeling</td>
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CHAPTER 6
CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

Globally, there is realization of the importance of breastfeeding effects on the health and nutrition receiving of infants and young children. Breast-milk is the first natural food for babies, it provides all energy and nutrients that the infants need for the first months of life. It has valuable impact not only on children’s health but also mother’s health. However, due to the advertising and promotion of breast-milk substitutes, a decline in breastfeeding rates occurs in developed countries.

Women, as human being and consumers, have the right of breastfeeding and the right be protected from misleading advertising or other aggressive marketing information. Companies use all forms of tactics to promote their expensive products and make people misunderstand that their products are essential for health. Using claims, idealization, gifts, samples, cross promotion and advertising are, for example, tactics that lead mothers as the consumers to be confused to choose how to feed their infants and young children appropriately.

In accordance with international standards, the WHO orders to ensure an environment that supports proper infant and young child feeding. Internationally, WHO recommended that “Exclusive breastfeeding is recommended up to 6 months of age, with continued breastfeeding along with appropriate complementary foods up to two years of age or beyond” Furthermore, the International Code of Marketing of Breast-milk Substitutes and subsequent relevant Health Assembly Resolutions is promulgated.

According to the European Union Regulations and the United Kingdom Regulations, there is attempt to implement the International Code of Marketing of Breast-milk Substitutes by prohibit manufacturers and distributors to make promotions and commercial practices about infant formula products. Specifically, there are also requirements for food information, nutrition declaration, health information for infant formula, composition substance, and other information relating to infant and young children. Moreover, they have to specify the measures of cross promotion which is one form of marketing promotion including packaging, branding, and labeling of a product.
that closely resemble that of another. The European Union and the United Kingdom laid down the regulations to protect any risk of confusion between infant formula of which the advertising and promotion are prohibited and infant formula of which the advertising and promotion are not prohibited. In the European Union, under the Regulation 609/2013, it is ruled that the labeling, presentation and advertising of infant formula and follow-on formula shall enables the consumers to make a clear distinction between them, in particular those texts, images and colour used. While in the United Kingdom, under the Department of Health Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007, it is required more in detail on labeling, advertising and presentation of the product in order to avoid the risk of confusion including the specific terms of the product, the blocks of text, and the colour scheme used on the packaging.

In the Philippines, the International Code of Marketing of Breast-milk Substitutes is fully implemented. It is required that information sharing, education about the prohibition to promote the product, the controlling of label they impose, and manufacturers’ duty and responsibility to the health care system and health workers must be provided in order to encourage and promote breastfeeding in line with the International Code of Marketing of Breast-milk Substitutes.

Having examined all related Thai laws, the direct measure to control the marketing of breast-milk substitutes is the Regulation of Marketing of Foods for Infants and Young Children and Related Products 2008. However, this code possess the status as regulation of the Ministry of Public Health (MOPH), it is not legislative or statutory law that can be enforced against the marketing of breast-milk substitutes.

The Announcement of the Food and Drug Administration Criteria for Food Advertisement B.E.2551 and revised (No.2) B.E.2555 (2012) under the Food Act B.E.2522 laid down the prohibition of only advertisement of modified milk, infant food, follow-up formula modified milk/infant food and young children, and special-purpose food intended for infants and young children. It cannot covers the other marketing strategies as required by the International Code of Marketing of Breast-milk Substitutes.
6.2 Recommendations

Based on the research on the measures to control the marketing of breast-milk substitutes products in consideration of the International Code of Marketing of Breast-milk Substitutes, the Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children of WHO, the Regulation of European Union, the measures of the United Kingdom, the executive order No.51 of Philippines, and the measures of Thailand, it is found that Thailand lacks of the provision and restriction on controlling of the marketing of breast-milk substitutes products. Thus, the author would provide the recommendations as follows:

**6.2.1 Impose the scope of protection**

By means of imposing the scope of protection, this method would cover all commercially produced breast-milk substitutes that are marketed as being suitable for infant and young children up to the age of 3 years following to the recommendation of Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children. According to the protection for children in the scope of 3 years, the follow-up formula and growing-up milk is supposed to be include in the scope. Accordingly, manufacturers will be prohibited to make the cross promotion through products for older infants which are not fall into the scope of protection.

**6.2.2 Launch the national legislation to prohibit the marketing of breast-milk substitute products**

In relation to the issue of domestic law, Thailand should provide the national legislation to control the violation conduct of the manufacturer, distributor and representative rather than the regulation without any sanction following to the draft from the Department of Health and the draft from the Council of state No.1087/2559 as follows:

**6.2.2.1 The controlling of marketing**

a. Advertising

b. Selling or promoting by distributing coupons for discount, setting cheaper prices, giving some rewards, presenting with allowed methods to convince the customers to buy their products
c. Distributing free samples of their products except when necessary for the purpose of professional evaluation or research

d. Donating fund except the necessary case provided by this act

e. Directly giving any things which conceal the logo of their brands to the pregnant, mother and members of their families

f. Supporting seminars, meetings, activities, and competition, as well as giving advice through a phone call or any other methods directly or not directly to connect with pregnancy mother including members of their families with intention to recommend to choose their infant formula products

g. Providing facilities labeled their logos with the main purpose to connect their products with the health care system

h. Giving or offering to give some presents, money, inducement or any other benefit to the professionals, nurses, and health care personnel who are responsible for infant and mother’s health care

i. Providing the academic meeting, seminar regarding foods and breast-milk substitutes for infants and young children and related products for health care system or professional and have to notify the detail of the meeting to the Department of Health

6.2.2.2 The controlling of advertising

In case of advertising, the draft has already prohibited manufacturers to advertise breast-milk substitute product in section 14 that “No person shall advertise Food for infant and young children” Nevertheless, it is too strict to consumers to be knowledgeable and acknowledge factual and scientific information. Thus, it should be amend as “The advertisement of food for infant and young children can be advertised by dissemination of technical information in medical journal, dissemination of technical knowledge to doctor of medicine, nurse, midwives or nutritionist.” and “Such information shall not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding”
6.2.3 Add the provision to avoid risk of confusion between the products.

Currently, in relation to an advertising, labelling and presentation, Thai legal control does not mention to the prevention of cross promotion or the concept of avoidance of risk of confusion between the group of forbidden to advertise or promote product and the group of permitted to advertise or promote product. Thus, the current legal and the draft should add this prevention measure through the measures control of advertising, labelling and presentation following to the European Union 609/2013 and the Infant Formula and Follow-on Formula Regulation 2007.

6.2.3.1 Advertisement

The draft should be added the provision to separate the difference between the breast-milk substitute products under the scope of the draft and related products in order to assist consumers and enable them to clearly distinguish the product.

Consequently, an advertisement of the group of forbidden to advertise or promote product shall not similar to the group of permitted to advertise or promote product which may cause the consumers confuse to use the product under the scope of law.

6.2.3.2 Labeling

a. Amending the provision of label on “Presenting Name”

With regard to the presenting name, the Notification of Ministry of Public Health No.367 Clause 13 (3) and Notification of Ministry of Public Health No.351 Clause 13 (3) state the issue of presenting name of food on Label that “If the manufacturer would like to use the trade name such name type or kind of food shall be appeared in the same line together with trade name and size of letters may be different from trade name but shall be legible”

This provision should be amended to “If the manufacturer would like to use the trade name such name type or kind of food shall be appeared in the same line together with trade name and size of letters should no smaller than the trade name.”
b. Adding the solution through picture and block of text

With regard to the picture and block of text, the Notification of the Ministry of Public Health No.156 controlling on label or the draft apart from require for statement to encourage breastfeeding. To prevent the confusion, it should add the solution through picture and block of text between the group of product which are permitted to advertise or promote and the group of forbidden to advertise or promote product. Likewise, the position on label of the name or type of food, the picture, the brand name and the recommendation to the age of usage should be laid down in the position which less confusion to consumer.

c. Adding the solution through colour scheme used

The Notification of the Ministry of Public Health No.156 or the draft should require for the different colour scheme used for the group of forbidden to advertise or promote product. The **packaging should be clearly different to the colour scheme of** the group of product which are permitted to advertise or promote packaging. Furthermore, using different shades of the same colour is not acceptable as it may lead to confusion.

6.2.3.3 Presentation

In relation to in-store presentation, the draft should add the legal control of companies. The companies must ensure that they are clearly differentiated in order to avoid any risk of confusion which are as follows:

a. Shelf-talkers (attachments that add a company’s logo or sales message to the edge of a shelf) and other in-store promotional devices for the group of product which are permitted to advertise or promote must not be used in the vicinity of food for the group of forbidden to advertise or promote product

b. The group of forbidden to advertise or promote product should be located at a different part of the store to the group of the group of product which are permitted to advertise or promote. If this is not possible, they should be clearly separated in physical location.
However, in relation to in-store presentation, this regulation should not be enforced with the mini-store which does not have enough area to locate the product in difficult location. The mini-store who are exempted should grant the pharmacist or the nutritionist to recommend customers in the area of the store in order to make a clear differentiated understanding about the product all the time.

6.2.4 Impose the sanction to enforce with the health worker

Because health workers have essential role to play in guiding infant feeding practices, encouraging and facilitating breastfeeding, the draft should impose the sanction to health workers who receive financial or material inducements to promote product or giving any samples to pregnant women or mother of infant and young children. With regard to the violation, health workers shall be notified to their federation to be considered by the Department of Health and the federation has their own authority to consider to the violation.

6.2.5 Launch the provision which requires for information of encouraging breastfeeding

Apart from necessary information and the statement of the appropriate usage of products which should not discourage breastfeeding, the Notification of the Ministry of Public Health No.156 or the draft should be added the legal control of the picture or text which may idealize to use the breast-milk substitute and the message that should support breastfeeding as prescribed by the Article 9.1 of the International Code of Marketing of Breast-milk Substitutes.

a. In case of picture or text, it should be added the provision to prohibit the use of the picture or text on label which may idealize to the use of breast-milk substitutes between the group of forbidden to advertise or promote product and the group of product which are permitted to advertise or promote following to Article 4 of the International Code.

b. Rather than prohibit the inappropriate message, the message on label should include the recommendation of WHO to breastfeed that is “Exclusive breastfeeding is recommended up to 6 months of age, with continued breastfeeding along with appropriate complementary foods up to two years of age or beyond.”
6.2.6 Launch the prohibition of making the promotion with the other person apart from pregnant women and mothers

It is essential to prescribe the provision to prohibit manufacturers from making the promotion with the other person apart from pregnant women and mother in order to get personnel information of pregnant women and mother in the same chapter of prohibition the manufacturer to make the promotion as follows:

“the manufacturer, importer, distributor and representative shall not give or offer to give any presents, money, inducement or any other benefit to anyone in order to get personnel information of pregnant women and mother”

6.2.7 Specify the level to the fines punishment

In accordance with a fine punishment, the law should impose both of fixed amount of fine and the level of fine to the violation that counts by the days until the actions against the law following to the section 23 of the draft from the Department of Health

6.3 Concluding Remarks

This thesis focuses on the issue of various marketing methods in breast-milk substitute products. It could not refuse that those methods have influenced purchasers' decision-making process to select either breast-milk or breast-milk substitutes for babies who are in the ages at least 6 months to 2 years or more which WHO and UNICEF recommended to provide breastfeeding milk to them. With regard to breast-milk substitutes, the substitutes are marketed directly to the consumers via mass media and advertisement and indirectly via incentives, free samples, donation of formula, promotional gifted to new mothers and gifted given to health workers. The design, packaging, and labeling of milk for older children, milk for mother and related products are packed and designed to look closely resemble with breast-milk substitutes and promoted in ways that cross-promote its formula product. This leads to confusions as the purpose of the product. The promotion of breast-milk substitutes and marketing
influences and induce mothers to believe that breast-milk substitutes is equivalent or better than to human breast-milk and finally decide to stop breastfeeding.

The writer agreed with the reinforcement to launch the law controlling the methods of marketing in breast-milk substitutes in Thailand in order to comply with the recommendation guided by the WHO. In addition, the law could be imposed to control companies and their marketing methods which have been on sale, exchanged, and given premiums without being aware of the healthy condition of Thai children who should have milk from their mothers by breastfeeding in the suitable period. Nevertheless, besides the issue of marketing methods, there are other factors which have influenced the reducing of breastfeeding as well. The maternity protection and breastfeeding facilitation in workplaces are the two examples as follows. Regarding the first example, the maternity protection, the periods of maternity leave have not complied with the WHO's recommendation suggesting to breastfeed babies whose ages are at least 6 months to 2 years or more. On the contrary, there are normally 90 days or 3 months for maternity leave in Thailand. Accordingly, this is the prospective issues which the law could have its role to change, promote, or control existing situation in order to increase the breastfeeding rate in Thailand. Regarding the other example, it is also necessary to control companies in Thailand to facilitate areas for breastfeeding in their workplaces. Even though the facilitation of breastfeeding areas in workplaces is enforced as a law in other countries, this idea is a recommendation in Thailand merely. Therefore, this issue is worth paying attention and it could enable the relevant law to be improved or changed so as to promote and increase the breastfeeding rate in Thailand.
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Appendix
The Guidance Note on the Infant Formula and Follow-on Formula Regulations

2007

Differentiating infant formula and follow-on formula
**BIOGRAPHY**

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