



Draft Guidance on Regulating Digital Marketing of Breast-milk Substitutes

Breastfeeding Advocacy Australia consultation submission, 17th September 2023

The Seventy-fifth World Health Assembly (WHA 75(21)) requested that the Director General develop guidance for Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes, so as to ensure that existing and new regulations designed to implement International Code of Marketing of Breast-milk Substitutes, including subsequent relevant resolutions (the Code) adequately address digital marketing practices for the Seventy-seventh World Health Assembly in 2024.

Digital marketing technologies have created new marketing tools that are powerfully persuasive, extremely cost effective. Digital marketing is not always easily recognisable as advertising or promotion and can deliver breast-milk substitutes promotions covertly. It also involves a broader range of actors than those involved in traditional marketing practices. Applying the Code to digital environments requires the development of specific regulatory mechanisms, coordination across a broader set of government bodies, and the establishment of specific legal duties on the range of entities involved in the digital marketing value chain.

The WHO Secretariat convened a Technical Advisory Group (TAG) to provide technical, legal, policy, and implementation advice and expertise to inform the development of the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.

The purpose of this open public consultation is to gather feedback from diverse stakeholders on the draft Guidance to Member States.

1. What is your full name? *

Grace Beaver

2. What type of organization do you represent? *

Civil Society Organization

3. What is the name of the organization you represent? *

Breastfeeding Advocacy Australia (BAA)

4. What is your role (job title)? *

Breastfeeding Advocacy Coordinator



5. What is your email address (work email if you're representing an organization)? *
breastfeedingadvocacyaustralia@gmail.com

6. What country do you live in? *

Australia

7. Comments on Purpose section

Breastfeeding Advocacy Australia agrees with the purpose.

8. Comments on Background section

2. Breastfeeding plays a critical role in mitigating the risk of non-communicable diseases, including obesity, diabetes, allergies, asthma, and gastrointestinal illnesses. Unnecessary use of infant formula can result in an increased risk of these non-communicable diseases, as well as increased risk of illnesses resulting from contamination in both the non-sterile UPF, exacerbated by potential improper preparation. The risks of engaging in unnecessary and improper preparation or use of BMS must be included in labelling of infant formula.

BAA recommends that there be a warning label, not only on the infant formula tin, but also on any digital marketing of both infant formulas and growing up milks (GUMs). An example may be a statement to include the increase of both long term and short term negative health outcomes associated with UPF use.

9. Comments on Scope section

6. BAA requests clarification of the first sentence of point 6. We believe there is contradiction, and this sentence will lead to debate regarding what products are covered under the Code. There has been ongoing discussion surrounding what is and is not covered under the Code. There needs to be a clear, independent guideline of included products, due to the Code predating current marketing techniques.

AI needs special mention in the scope as it is the most current, up-and-coming technology which will have large impact in the marketing landscape in this digital era.

Products targeted for maternal use must be included within the scope. Breastfeeding is a human right for both mother and child, and so the mother must be equally protected from the same aggressive and predatory marketing techniques.

"The Convention on the Elimination of All forms of Discrimination Against Women recognises that governments have a duty to safeguard women's right to health, including by ensuring, effective regulation of the marketing of breast-milk substitutes and the implementation and monitoring of the International Code of Marketing of Breast-milk Substitutes."

Furthermore, the scope must extend to include any product that may replace breastmilk- including, probiotics and other products that are novel food or additives and RUTFs.

The final sentence needs clarification. The scope needs to be pre-pregnancy, pregnancy, birth and beyond. From cradle to grave, maternal, and infant protection should not be separated.



Point 15 “prohibit manufacturers and distributors of products within the scope of the Code from contacting or seeking or soliciting direct or indirect contact with pregnant women, parents or caregivers of infants and young children in digital environments.” further highlights that there must be protection from pregnancy, and so, the scope of products should also include this demographic.

Regarding the age scope, it is inappropriate to put an upper limit on the protection of children’s health and the impacts of UPF. mothers are targeted with products from pre-pregnancy and all the way through until birth, then children are introduced to UPF as their sole diet from birth, with follow-on UPF and growing up milks as the next step/level product. From there, cross promotion continues at every stage of life which suggests that children need to be protected for as long as possible.

Additionally, the age range should be “from birth onwards” to avoid any confusion.

7. “Filmmaking” needs to be included as it is a major form of subliminal marketing. Subliminal marketing is a tactic used to influence consumer behaviour, such as the tobacco industry influence over motion pictures and the inclusion of tobacco products. It has been concluded that there is causation between young people being exposed to tobacco imagery and the uptake of smoking- hence the introduction of “tobacco depictions” warnings. It should be expected that the Code applies to the film industry and should abide by the same expectations as any other digital media.

8. As above, film industry is a large contributor to digital marketing, and so it is reasonable to expect that it is explicitly recognised in the list of examples.

Using the term “should” allows for a weakening of these guidelines. As stated previously, there needs to be a clear standard from the introduction and first implementation.
The word “should” needs to be replaced with “must”.

9. This paragraph only serves as a loophole. There needs to be a universal collaboration and standards to ensure that the Code is effective in its purpose. By indicating that this is an adaptable guideline, here is an allowance for countries to continue to be “not aligned” with the Code. Furthermore, this enables countries to continue ignoring their responsibility in the protection of mothers and their children from predatory digital marketing practices. This paragraph needs to be completely removed.

10. Comments on Terminology section

10. There must be the clear inclusion of “bottles, teats and complementary foods”, with a broader scope to include pre-pregnancy, birth and beyond. Cradle to grave protections.

d. This requires a broader scope to include pre-pregnancy, birth and beyond. Cradle to grave protections. Alternatively, another point is to be made to protect breastfeeding mothers from digital marketing of products that undermine the quality, supply or / (but not limited to) “mummy shakes”, pre/pro biotics, galactagogues, teas and other beverages.
Additionally, the age range should be “from birth onwards” to avoid any confusion.

e. The inclusion of pharmacies is required as they are often viewed as a trusted source for medical advice, and still there are breaches in the Code in their online shopping platforms. Any established sales outlet that is viewed as a means to accessing healthcare advice or products must be included. Considering that “point f” determines that a “health worker means a person working in a component of such a health care system, whether professional or non-professional”, then this would include pharmacists/chemists and those who work alongside in the same establishment, or in a digital capacity.



Allied health professionals and registered healthcare professionals must be included because the formula industry actually employs a diverse range of health professionals, as a marketing technique, to appear that they are aligned with healthy lifestyle choices.

Supporting evidence below:

COMPLIANCE WITH THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES - Baby-Friendly Hospital Initiative - [NCBI Bookshelf \(nih.gov\)](#)

The International Code of Marketing of Breast-milk Substitutes (who.int)

<https://apps.who.int/iris/rest/bitstreams/1278517/retrieve>

h. Marketing must also include influential content.

The statement is not making it clear that it is content which must also be considered. Marketing goes beyond a product or a tangible item or service- it must take into consideration the psychology and what behaviours, or social norms are being changed.

For example, an image of a bottle or the use of the bottle-feeding emoji (the content) markets bottle feeding and implies formula use in general and is encouraging a change in behaviour- social engineering.

Influential content expands the scope to include psychosocial factors.

i. There needs to be clarification regarding what “traditional communication channels” covers, as well as “other marketing media”.

11 a. BAA acknowledges the importance of the wording “but are not limited to...” when it comes to a diverse and ever-changing technological era.

d. Another example of leniency and a potential loophole. There needs to be a strong expectation that this document **REQUIRES** implementation, not that it is optional. Most countries do not have appropriate legislative or regulatory frameworks to begin with, so an introduction of strong and ethical guidelines from the beginning will set a standard into the future.

Voluntary measures must first be eradicated as a valid response to the Code from countries who have implemented it. Doing so strengthens these guidelines and ensures that it will be complementary to the Code and enforced as international standard.

e. Infant formula is a “gateway UPF”, and as such, it is inappropriate to put an upper limit on the protection of children’s health and the impacts of UPF. mothers are targeted with products from pre-pregnancy and all the way through until birth, then children are introduced to UPF as their sole diet from birth, with follow-on UPF and growing up milks as the next step/level product. From there, cross promotion continues at every stage of life which suggests that children need to be protected for as long as possible.

11. Comments on Recommendation 1

1. Using the term “should” allows for a weakening of these guidelines. As stated previously, there needs to be a clear and strong stance from the introduction and first implementation of these guidelines.

The word “should” needs to be replaced with “must” in EVERY recommendation.

1.1 a. Marketing must also include influential content and subliminal marketing.

The statement is not making it clear that it is content which must also be considered. Marketing goes beyond a product or a tangible item or service- it must take into consideration the psychology and what behaviours, or social norms are being changed.



For example, an image of a bottle or the use of the bottle-feeding emoji (the content) markets bottle feeding and implies formula use in general and is encouraging a change in behaviour- social engineering.

Influential content expands the scope to include psychosocial factors.

Subliminal marketing is a tactic used to influence consumer behaviour, such as the tobacco industry influence over motion pictures and the inclusion of tobacco products. It has been concluded that there is causation between young people being exposed to tobacco imagery and the uptake of smoking- hence the introduction of “tobacco depictions” warnings. It is not necessarily a brand being marketed, but the act itself that is being promoted, which must be considered as predatory marketing due to social behaviours/choices being subconsciously manipulated by imagery. Digital marketing can create new social norms, and when these are creating poor health outcomes for a vulnerable population, there must be a firm regulatory stance on social engineering and subliminal marketing of these behaviours and products.

c. This statement requires wording to allow for future ways in which industry can entice individuals, groups, or businesses. For example, an offering of services.

Add: “and other incentives” to ensure better coverage of potential future incentives.

e. This must be strengthened to ensure there is NO interaction with consumers in any way. For example, using the “reaction” features (e.g., ‘likes’) to comments can send a particular message to consumers, as can replying to comments and engaging in consumer forums.

Just as the next point below states (See: f.) that there should be no “encouraging or enabling consumers to share, react or comment on marketing content”, there should be no sharing, reacting, or commenting on consumers engagement or content either.

f. There needs to be a clarification or definition on what “marketing content” means.

If something is posted by a business, the sole purpose would be for engagement/marketing purposes, and as such, this statement should apply to ALL posted/distributed content by the brand/manufacturer.

h. This needs to expand to include social influencer and/or celebrity digital content, and the relating of adverse breastfeeding experiences.

Social media influencers are engaged by industry as an effective way for brands to reach/target potential customers, and in turn those influencers target mothers with 'explainer videos', endorsements, product mentions, giveaways, incentives, 'story telling' of adverse breastfeeding experiences and 'solutions' to their breastfeeding issues which invariably include formula, pumping, bottles, teats, lactation cookies, pregnancy and breastfeeding milks, probiotics etc.

1.2 Bottles and teats must be included.

1.3 This statement serves well to reiterate our earlier point that the scope needs include pre-pregnancy, pregnancy, birth and beyond. From cradle to grave, maternal, and infant protection should not be separated.

1.4 specific guidance and pre-approved statements that can be used and not changed. This could be facilitated with the assistance of WHO and will include a risk warning and a UPF classification notice. It must only state facts and data and will not include any emotive language or omit any information in order to persuade decision making.



12. Comments on Recommendation 2

The word “should” needs to be replaced with “must”.

The term “health care system” should be replaced with “health system”. These both have different meanings, and, in this context, we want to refer to the system as an industry rather than the acts of care. Therefore, “health system: must be used in this point.

2.1 There must be the inclusion of “....and WHA resolutions”, as well as the clear inclusion of AI as a digital marketing technique or as a form of education and/or guidance which replaces any professional advice.

2.2 The inclusion of the words “payment-in-kind (PIK)” would strengthen this point. PIK is the use of a good or service as payment instead of cash.

2.3 On the surface, “endorsement” and “sponsorship” are very similar terms. They’re both tools that brands use

to increase brand awareness and boost a company’s reputation. Both sponsorships and endorsements are a form of partnership marketing designed to align a business with a specific entity, individual, or organization. Both terms must be included to ensure that there is no room for misinterpretation, and will read: “Regulatory measures must prohibit sponsorship and/or endorsement...”

13. Comments on Recommendation 3

The word “should” needs to be replaced with “must”.

14. Comment on Recommendation 4

The word “should” needs to be replaced with “must”.

The product range of this point needs to be made clearer by using the words: “Foods and products designed for human consumption” which includes products such as probiotics, tonics, teas etc.

15. Comment on Recommendation 5

The word “should” needs to be replaced with “must”.

It is imperative that this is independent. Measures must be taken to ensure that there is no industry influence or any industry associates involved in this action.

There are examples of industry being involved with the monitoring and compliance resolutions, which defeats the purpose. By ensuring that there is an independent body who oversees this point, there is likelihood for better protections and compliance.

The word “should” needs to be replaced with “must”.

5.1 Clarification is required. This is not a clear guideline and allows for loopholes to be identified. What constitutes as “actors involved in the digital marketing value chain”. A more succinct and user-friendly recommendation is required.

16. Comments on Recommendation 6

The word “should” needs to be replaced with “must”.



17. Comments on Recommendation 7

The word “should” needs to be replaced with “must”.

- a. The actions need to be monitored, EVALUATED, and reported.

By evaluating the activities that are being undertaken, the guidelines can be adapted and evolutionary in nature.

- b. First, this would need to be proven, effective, efficient, and user-friendly. If they are not all these things combined, it will not be a useful mechanism.

18. Comments on Recommendation 8

The word “should” needs to be replaced with “must”.

8.2 Breastfeeding Advocacy Australia STRONGLY agrees with this recommendation. Recommendation 8.2 should be a global standard.

19. Comments on Recommendation 9

The word “should” needs to be replaced with “must”.

There must be the addition of “products for oral human consumption”, to replace “foods for infants. and young children” into this recommendation.

9.1 Breastfeeding Advocacy Australia STRONGLY agrees with this recommendation.

9.3 There must be the addition of “products for oral human consumption”, to replace “foods for infants. and young children” into this recommendation.

20. Comments on Recommendation 10

The word “should” needs to be replaced with “must”.

BAA strongly recommends including ALL WHA resolutions, not just 69.9.

The term “health care system” should be replaced with “health system”. These both have different meanings, and, in this context, we want to refer to the system as an industry rather than the acts of care. Therefore, “health system: must be used in this point.

21. Comments on Recommendation 11

The word “should” needs to be replaced with “must”.

BAA STRONGLY agrees with Recommendation 11.



22. Is there something that should be addressed in the Guidance that is missing from the draft?

BAA further recommends:

1. Universities must be covered under health workers.
2. There must be a clause that covers individuals or groups who do not disclose their relationships with

brands or media outlets and the like, when in comments section or writing an opinion piece.

3. There must be a clause that prohibits individuals being paid to write reviews or relatives/associates of organisations that market/sell/distribute, etc BMS.

23. Do you have any other comments on the draft?

Enter your answer