

# MARKETING (BREAST-MILK SUBSTITUTES) ACT

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## ARRANGEMENT OF SECTIONS

### SECTION

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## MARKETING (BREAST-MILK SUBSTITUTES) ACT

**An Act to provide for the control of the importation, sale, advertisement, distribution, or offer as sample or gift of breast-milk substitutes or infant formula to members of the public.**

[1990 No. 41.]

[30th December, 1990]

[Commencement.]

### 1. Prohibition of importation, sale, etc., of breast-milk substitutes

As from the commencement of this Act, no person shall import, sell, display for sale, promote the sale of, distribute or offer as sample or gift to any person or the general public, any breast-milk substitute or infant formula, unless the breast-milk substitute or infant formula has first been registered with the appropriate authority.

### 2. Promoting sale of breast-milk substitute or infant formula

No person shall, for the purpose of promoting or inducing the sale of any breast-milk substitute or infant formula, advertise or give to any person, institution or health facility any bonus sample of a breast-milk substitute or infant formula or any promotion device thereof.

### **3. Particulars to be inscribed on container**

(1) No person shall sell, display for sale, consign or deliver any breast-milk substitute or infant formula in a container, unless the container bears a label on which there appears-

(a) in English language and three main Nigerian languages a true statement of the product as to the following matters, that is-

(i) composition;

(ii) required storage condition;  
(ii) batch number; and

(iv) expiry date;

(b) on a label marked on or securely attached to the container the following statement-

"Breast-milk is the best food for the child as it prevents diarrhoea, chest pain and other diseases".

(2) Any label affixed to any container of a breast-milk substitute or infant formula as required under subsection (1) of this section shall bear directions for use in English language and three main Nigerian languages and such adequate warnings against the health hazards of inappropriate preparation or use.

(3) The statement referred to in subsection (1) of this section shall-

(a) be clearly legible and shall appear conspicuously and in a permanent position on the label;

(b) specify the name of either the manufacturer, distributor, packer or labeller of the breast-milk substitute or infant formula; and

(c) bear an address at which such person carries on business which shall be clearly shown in all notices, advertisements and other publications used by such person in connection with his business as dealer in breast-milk substitute or infant formula.

### **4. Prohibition against giving of labels, etc.**

No person shall give with any breast-milk substitute or infant formula sold by him or displayed by him for sale, any label or document, whether attached to or printed on the wrapper or container or not, which bears any word or pictorial device whatsoever suggestive of the superiority of breast-milk substitute or infant formula over breast-milk.

### **5. Publication of advertisement for breast-milk substitute and infant formula**

(1) No person shall publish or be a party to the publication of any advertisement for breast-milk substitute or infant formula which makes any claim or suggestion that bottle-feeding is equivalent to breast-feeding.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding ₦1,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) No proceedings for an offence under this section shall be taken against any person whose business it is to publish or arrange the publication of advertisement received in the ordinary course of business.

#### **6. Duty to promote and protect breast-feeding**

It shall be the duty of every governmental, non-governmental or private institution or organisation engaged directly or indirectly in health care delivery to take such measures as may encourage, promote and protect breast-feeding.

#### **7. Prohibition against use of facility of health care delivery system**

No facility of a health care delivery system shall be used for the purpose of promoting, displaying placards, posters or materials concerning breast-milk substitute or infant formula or other products of like nature.

#### **8. Prescribed quality**

No person shall manufacture for sale any breast-milk substitute or infant formula, unless the manufacture of such breast-milk substitute or infant formula complies with the standard and quality under the relevant provisions of the Food and Drugs Act relating to that particular product and the applicable standards recommended by the Codex Alimentarius Commission and the Codex Code of Hygienic Practice for Foods for Infants and Children.

[Cap. F32.]

#### **9. Laboratory analysis**

(1) Every breast-milk substitute or infant formula intended for sale shall be subjected to a satisfactory laboratory and clinical analysis by the manufacturer or distributor.

(2) Every manufacturer or distributor of a breast-milk substitute or infant formula shall keep a proper record at his place of business of the analysis carried out under subsection (1) of this section.

#### **10. Power to search**

For the purposes of this Act, a person authorised in writing by the Minister, may at all reasonable times and on production of that authority-

(a) enter any building or place in which that person has reason to believe there are-

(i) any breast-milk substitute or infant formula manufactured or kept for commercial purposes; or

(ii) any books, documents or papers relating to the manufacturing of milk substitute or infant formula;

(b) search for any breast-milk substitute or infant formula or any such books, documents or papers in any such building or place;

(c) examine, count any such breast-milk substitute or infant formula and take extracts from, or make copies of any such books, documents or papers relating thereto.

#### **11. Penalties**

(1) Any person who contravenes any of the provisions of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding ₦1,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Where an offence under this Act has been committed by a body corporate, every person who at the time of the commission of the offence was a proprietor, director, general manager, secretary or other similar officer, servant or agent of the body corporate (or person purporting to act in any such capacity) shall, as well as the body corporate, be guilty of the offence and may be proceeded against and punished accordingly.

## **12. Forfeiture**

(1) Where any person is convicted of an offence under this Act in relation to any breast-milk substitute or infant formula or container or label, the court shall, in addition to any other penalty it may impose under this Act, order that the breast-milk substitute, infant formula, label or container owned by that person and in respect of which the offence was committed be forfeited to the Federal Government.

(2) Every breast-milk substitute, infant formula, container or label forfeited under subsection (1) of this section shall become the property of the Federal Government and shall be disposed of in such manner as the Minister may direct.

## **13. Regulations**

The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act.

## **14. Interpretation**

In this Act, unless the context otherwise requires-

**"advertisement"** includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound; and "advertise" shall be construed accordingly;

**"appropriate authority"** means the National Agency for Food and Drugs Administration and Control;

[1999 No. 22.]

**"breast-milk substitute"** means any food being marketed or otherwise represented as a partial or total replacement for breast-milk;

**"container"** includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

**"infant"** means a person under twelve months old;

**"infant formula"** means a breast-milk substitute formulated and adapted to satisfy the normal nutritional requirements of an infant not exceeding twelve months old in accordance with applicable regulations under the Food and Drugs Act;

[1999 No. 22.)

**"label"** means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, attached to a container containing breast-milk substitute or infant formula;

**"Minister"** means the Minister charged with responsibility for matters relating to health.

**15. Short title**

This Act may be cited as the Marketing (Breast-Milk Substitutes) Act.

MARKETING (BREAST-MILK SUBSTITUTES) ACT

**SUBSIDIARY LEGISLATION**

*No Subsidiary Legislation*