

CHANDER UDAY SINGH
ADVOCATE, HIGH COURT

General Assurance Building, 1st Floor, 232, Dr Dadabhai Naoroji Road,
Bombay 400 001, Phone: 2027176

Dr. S. K. Anand,
Association for Consumer Action
on Safety and Health,
Seena, Ground Floor,
Near: Subhash Road,
Bombay.

Dear Dr. Anand,

Sub: Opinion on sponsorships
inducements etc. to bodies
of paediatricians

I enclose herewith the ~~opinion requested~~
you trust that all your queries are
answered. ~~Please let me know if anything~~
further is required.

Yours faithfully,



Chandar Uday Singh

16-4-1994

OPINION

The querists, Association for Consumer Action on Safety and Health, have requested my opinion on whether, in view of Section 9 of The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, it is permissible for manufacturers to give, and Paediatric Associations to receive, financial support or aid for the purposes of holding professional conferences, seminars and the like.

For the reasons set out below, it is my considered opinion that this query can only be answered in the negative. In my opinion, it is not only impermissible that such financial support or assistance be given, but it indeed a criminal offence punishable with imprisonment or fines.

In order to properly answer the query, it is necessary to examine the entire Act as well as the Rules framed thereunder, and not merely Section 9 of the Act. The preamble shows that the dominant purpose of this Act is to protect and promote breast-feeding, and it is in this context that the provisions of the Act must be construed. Sub-section (a) of Section 3 stipulates that no person shall advertise or be party to advertising for the distribution, sale or supply of infant milk

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substitutes or feeding bottles. The word "advertisement" is defined in wide terms in Section 2(1)(a) to include any notice, circular, label, wrapper and other documents including any visible representation or announcement using lights, sounds etc. Further, sub-section (b) prohibits the giving of any impression that substitutes are equivalent to or better than mother's milk, while sub-section (c) of Section 3 bars any person from taking part in the promotion of use or sale of substitutes etc. otherwise than in accordance with the provisions of the Act. When sub-section (c) is read along with the other provisions of the Act adverted to below, it becomes clear that sponsorships or funding by the infant food industry are clearly impermissible. Thus, the Act practically nips in the bud any attempt to sponsor conferences or seminars, since any representation or announcement or notice or other document, in respect of manufacturers, distributors or other sponsors would constitute an infringement of Section 3(a), while any impression given by the sponsor about the 'superiority' of his product, would violate Section 3(b).

2. Section 4 is couched in equally peremptory terms, and sub-section (a) thereof stipulates that no person shall offer any inducement of any kind for the purpose of promoting the use or sale of infant milk substitutes or feeding bottles. The use of the words "no person

"any inducement" and "of any other kind" makes it abundantly clear that this section is deliberately wide and it is intended that, apart from the specific inducements listed in sub-sections (a) and (b), Parliament intended that no loophole whatsoever be left to be exploited by unscrupulous manufacturers or distributors. Thus, the words "any other kind" are intended to cover up for the ingenuity of industry in finding new types of inducements which could not be foreseen or listed exhaustively, and in my opinion these words leave no manner of doubt that even the most indirect of inducements is forbidden. Since the infant food industry does not run for altruistic or charitable purposes, and since the sole purpose of sponsorship or funding is to promote their products by offering inducements to health workers, I am of the opinion that this section also bars industry from giving financial aid, and Paediatric Associations or others from receiving the same.

3. Section 5 of the Act prohibits donation or distribution of infant milk substitutes or feeding bottles, as well as informational or educational equipment or materials relating thereto. However, subject to such conditions or restrictions as may be prescribed the proviso to Section 5(b) permits distribution of informational or educational equipment

or materials to the health care system. However, this is considerably restricted by Rule 5 of the Rules framed under the Act in 1993. Rule 5 prescribes the conditions under which such donations or distribution of informational or educational equipments and materials may be made. This Rule, apart from prescribing that such donation or distribution must be accompanied by all the usual statutory information and warnings, also lays down that informational or educational equipments or materials should only be distributed or donated in case it is found necessary for the healthy growth of the infant by a medical practitioner. Thus, Section 5 does not enlarge the liberties of industry in any appreciable manner.

4. Sections 8 and 9 of the Act are particularly relevant for the present purposes. Section 8(1) specifies that no person shall use any health care system for the display of placards and posters promoting the use of substitutes, but the effect of this subsection is considerably reduced by its proviso. However, sub-section (2) of Section 8 in unambiguous terms prescribes that no person who produces, supplies, distributes or sells substitutes etc. shall make any payment to any person who works in the health care system for the purpose of promoting the use or sale of such substitutes etc. Once again, the use of the words "no person", "any payments" and "to any person who works

in the health care system" gives this sub-section a wide sweep, which would appear to take within its fold sponsorships or aid or financial assistance to conferences or seminars of professionals in the health care system, including paediatricians. Since it is absurd to imagine that industry would give money to Associations of Paediatricians for any purpose other than to promote the use or sale of their products, in my opinion Section 8(2) makes it clear that the giving and receiving of such payments is an offence under the Act.

5. Section 9 is also fairly clear in this regard, though some superficial ambiguity or conflict might at first be perceived between the two sub-sections thereof. Section 9(1) prohibits the industry from offering or giving, either directly or indirectly, any financial inducement or gift to a health worker or to any member of his family for the purpose of promoting the use of such substitutes etc. In my considered opinion, Section 9(1) clearly prohibits sponsorships, financial aid etc. of the nature described above, since inducements or gifts to one health worker also include inducements or gifts to health workers in the plural, or bodies consisting of large numbers of health workers. It is a fundamental principle of interpretation that the singular includes the plural, and hence donations, assistance etc. would appear to be covered under this

sub-section. It would be futile for industry or paediatric associations to contend that such financial assistance was not an inducement or gift for the purposes of promoting the use of such substitutes. Apart from the acknowledged past record of the infant food industry, in any event no manufacturer or distributor doles out money to paediatric associations out of motives of pure altruism or philanthropy. Indeed, if their intentions were only charitable, they would have been contributing to the cure of some life-threatening disease or to the establishment of museums or institutions of higher learning, and not to professional bodies of doctors who belong to the highest strata of Indian society, and can certainly afford to pay for their own conferences.

6. As pointed out above, there is some slight superficial conflict between sub-sections (1) and (2) of Section 9, but this is easily resolved on a closer scrutiny. While sub-section (1) prohibits direct or indirect inducements or gifts, sub-section (2) of section 9 stipulates that where any such person makes any contribution to, or incurs any expenditure on, a health worker, either directly or indirectly, such person and such health workers shall disclose the same to the institution or organisation to which the health worker is attached. On a careful reading of sub-section (2) it is apparent that whereas sub-section (1)

speaks of "inducement" or "gifts", sub-section (2) uses the words "contribution" or "expenditure". Further, sub-section (2) assumes that health workers in respect of whom contributions are made or expenditures are incurred, are health workers attached to institutions or organisations. Thus, it is clear that Parliament has advisedly drawn a distinction between inducements and gifts aimed at the promotion of products, and contributions or expenditures incurred in respect of health workers who are attached to institutions or organisations. It is my considered opinion that these two sub-sections are to be harmoniously reconciled by reading sub-section (2) as being applicable only to research grants, educational scholarships, contributions towards study projects and so on, in respect of those health workers who are studying or researching in institutions or organisations. Any other interpretation would render sub-section (1) otiose, redundant, and unworkable. Hence, I am of the considered opinion that on a proper interpretation of Section 9 also, the conclusion is inescapable that any donations, financial support, sponsorships or other aid or assistance from industry is prohibited insofar as paediatric conferences or seminars are concerned.


7. In order to round off my examination of the Act, it is worth pointing out that Section 20 makes it an

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offence to contravene any of the provisions of Sections 3,4,5,6,7,8,9,10 and 11 of the Act. While contravention of Sections 3,4,5,7,8,9,10, or sub-section (2) of section 11 are punishable with imprisonment of upto three years or with fines of upto Rs. 5000/-, or with both. breaches of Section 6 or sub-section (1) of section 11 also invite a minimum sentence of six months imprisonment. And section 22 is a vicarious liability provision, which makes every director, manager, secretary or any other person in charge of or responsible for the affairs of any company, firm, association etc. liable for the offence.

8. In light of the aforesaid discussion, I am of the considered opinion that Sections 3, 4, 5 (read with Rule 5(b) of the Rules), 8(2) and 9 are all independently contravened by the giving or acceptance of financial aid, support or sponsorships of the nature discussed above. Even if some escape is found in respect of any one of these Sections, I believe that there cannot be any escape either from each of the remaining sections, or from the cumulative effect of all of them. It is therefore my opinion that the query set out above has to be answered in the negative, and that it is wholly impermissible and illegal for the industry to fund any association of paediatricians, whether directly or indirectly.

I trust that your query is fully answered. If any doubts or ambiguities persist, please do not hesitate to seek a clarification from me.


16-4-1994
(CHANDER UDAY SINGH)