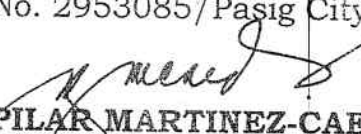



Petitioner prays for all other legal, just and equitable relief.

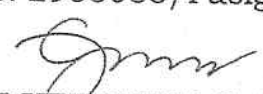
Pasig City for Manila, 27 June 2006.

**YORAC\* ARROYO CHUA\***  
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By:

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Copy Furnished by registered mail:

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REPUBLIC OF THE PHILIPPINES)  
QUEZON CITY

)S.S.

**VERIFICATION AND  
AFFIDAVIT OF NON-FORUM SHOPPING**

I, LEO P. WASSMER, JR., Filipino, of legal age, and with office address at Unit 502 One Corporate Plaza, #845 A. Arnaiz Avenue, Makati City, after having been sworn in accordance with law, hereby depose and state that:

1. I am the duly authorized representative of the Petitioner in the above entitled case;
2. I have caused the preparation of the foregoing Petition;
3. Having read the same, I confirm that the contents thereof are true and correct of my own personal knowledge;
4. I have not commenced any other action or proceeding involving the same issues with our Petition in the Supreme Court, the Court of Appeals, or any other tribunal or agency;
5. To the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency;
6. If I should learn thereafter that a similar action of proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification contemplated herein have been stated;
7. This affidavit is executed to attest to the truth of the foregoing.


IN WITNESS WHEREOF, I have hereunto affixed my signature in the place and date above written.

  
\_\_\_\_\_  
LEO P. WASSMER, JR.

2006 27 2006 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_, affiant exhibiting to me his Community Tax Certificate No. 12764801 issued at Quezon City on Feb. 07, 2006 and affirming to me that the same is his true and voluntary act and deed.

NOTARY PUBLIC

Doc. No. 282 ;  
Page No. 58 ;  
Book No. IV ;  
Series of 2006.

  
NOELLE RIZA D. CASTILLO  
Notary Public  
Until Dec. 31, 2007  
PTR No. 7167801/Q.C./01-05-06  
Roll No. 49443

## INDEX OF FOOTNOTES

- 1 Section 1, Article II, Freedom Constitution. Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative power.  
The President shall give priority to measures to achieve the mandate of the people to:
- (a) Completely reorganize the government and eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime;
  - (b) Make effective the guarantees of civil, political, human, social, economic and cultural rights and freedoms of the Filipino people, and provide remedies against violations thereof;
  - (c) Rehabilitate the economy and promote the nationalist aspirations of the people;
  - (d) Recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets of accounts;
  - (e) Eradicate graft and corruption in government and punish those guilty thereof; and,
  - (f) Restore peace and order, settle the problem of insurgency, and pursue national reconciliation based on justice.
- 2 Section 6, Art. XVIII, 1987 Constitution. The incumbent President shall continue to exercise legislative powers until the first Congress is convened.
- 3 Section 2, EO 51. The aim of the Code is 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 breastmilk substitutes and breastmilk supplements when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.
- 4 See Annex A.
- 5 Section 59, RIRR. These Revised Rules and Regulations shall take effect fifteen (15) days after its publication in a newspaper of general circulation with the requisite copy submitted to the University of the Philippines Law Center.
- 6 See Annex B.
- 7 See Annexes C and D, respectively.
- 8 See Annex E.
- 9 See Annex F.
- 10 People vs. Vera, G.R. No. 45685, November 16, 1937. "The power to make laws-the legislative power-is vested in a bicameral Legislature by the Jones Law (sec. 12) and in a unicameral National Assembly by the Constitution (Art. VI, Sec. 1, Constitution of the Philippines). The Philippine Legislature or the National Assembly may not escape its duties and responsibilities by delegating that power to any other body or authority. Any attempt to abdicate the power is unconstitutional and void, on the principle that *potestas delegata non delegare potest*. xxx The rule,

however, which forbids the delegation of legislative power is not absolute and inflexible. It admits of exceptions. An exception sanctioned by immemorial practice permits the central legislative body to delegate legislative powers to local authorities. xxx On quite the same principle, Congress is empowered to delegate legislative power to such agencies in the territories of the United States as it may select."

11 People vs. Exconde, G.R. No. L-9820, August 30, 1957. "The regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself can not be extended. So long, however, as the regulations relate solely to carrying into effect the provisions of the law, they are valid. A violation of a regulation prescribed by an executive officer of the Government in conformity with and based upon a statute authorizing such regulation, constitutes an offense and renders the offender liable to punishment in accordance with the provisions of law."

12 Section 4(e), EO No. 51. "**Infant**" means a person falling within the age bracket of 0-12 months.

13 Section 2, RIRR. These Revised Rules and Regulations are hereby promulgated to ensure the provision of safe and adequate nutrition for infants and young children by the promotion, protection and support of breastfeeding and by ensuring the proper use of breastmilk substitutes, breastmilk supplements and related products when these are medically indicated and only when necessary, on the basis of adequate information and through appropriate marketing distribution.

Section 4(d), RIRR. Breastfeeding is still appropriate for young children up to two (24 months) years of age and beyond.

Section 5(ff), RIRR. "**Young Child**" means a person from the age of more than twelve (12) months up to the age of three (3) years (36 months).

Section 6, RIRR. The Department of Health shall take measures to promote, shall take measures to promote, protect, support and monitor appropriate infant and young child feeding (IYCF) practices. Appropriate IYCF practices include the following:

- Proper latching-on immediately after birth and initiation of breastfeeding within the first thirty (30) minutes thereafter
- exclusive breastfeeding from 0-6 months
- appropriate complementary feeding from 6 months onwards
- continuous breastfeeding up to two (2) years of age or beyond

The goals will be achieved by providing women access to the support that they require - in the family, the community, and the workplace. DOH shall provide objective, updated and consistent information and training of health workers and the general public on infant and young children nutrition in partnership with the local governments and civil societies without any conflict of interest.

Section 8, RIRR. The government shall ensure that objective and consistent information is provided on infant and young child feeding, for use by families and those involved in the field of infant nutrition. This responsibility shall cover the planning, provision, design and dissemination of information, and the control thereof.

a. In this regard the Department of Health in collaboration with the national agencies, local government units and non-governmental organization shall:

a.1. Plan, provide, design, disseminate and regulate information related to infant and young child nutrition and the implementation of the Milk Code;

a.2. Formulate and implement a communication plan, which among others will indicate key messages on infant and young child nutrition;

a.3. Create a Technical Working Group to serve as a clearing house for all information and training materials on infant and young child nutrition and the Milk Code; and

a.4 Assist Local Government Units (LGU's) and other partners in developing strategies to promote breastfeeding and infant and young child nutrition.

Section 9, RIRR. The Department of Health shall ensure that research conducted for public policy purposes, relating to infant and young child feeding should, at all times, be free from any commercial bias; accordingly, the health worker or researcher involved in such must disclose any actual or potential conflict of interest with the company/person funding the research. In any event, such research and its findings shall be subjected to independent peer review.

Section 11, RIRR. No Advertising, promotions, sponsorships, or marketing materials and activities for breastmilk substitutes intended for infants and young children up to twenty-four (24) months, shall be allowed, because they tend to convey or give subliminal messages or impressions that undermine breastmilk and breastfeeding or otherwise exaggerate breastmilk substitutes and/or replacements, as well as related products within the scope of this Code.

Section 33, RIRR. The academe and the allied health institutions shall ensure basic education and training on Infant and Young Child Feeding (ICYF) and lactation management.

14 Section 4(a), RIRR. The following are the underlying principles from which the revised rules and regulations are premised upon: exclusive breastfeeding is for infants from 0 to six (6) months.

15 Section 8(e) RIRR - Manufacturers and distributors of products within the scope of this Code 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.

16 Paragraph b(1), Section 12, EO No. 51. The Ministry of Health shall be principally responsible for the implementation and enforcement of the provisions of this Code. For this purpose, the Ministry of Health shall have the following powers and functions:

(1) To promulgate such rules and regulations as are necessary or proper for the implementation of this Code and the accomplishment of its purposes and objectives.

17 De Leon, Hector S., ADMINISTRATIVE LAW: TEXT AND CASES, 4<sup>th</sup> ed., p.77. "Rule making' is legislation on the administrative level, that is, legislation within the confines of the granting statute, as required by the Constitution and its doctrines of nondelegability and Separability of powers."

18 Conte vs. Commission on Audit, 264 SCRA 19 (1996). "It is doctrinal that in the case of conflict between a statute and an administrative order, the former must prevail. A rule or regulation must conform to and be consistent with the provision of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute."

19 Article III Section 1, 1987 Constitution. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

20 US vs. Toribio, 15 Phil. 85 (1910). "To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the court."

21 Balacuit vs. CFI of Agusan Del Norte, G.R. No. L-38429, June 30, 1988. "To invoke the exercise of police power, not only must it appear that the interest of the public generally requires an interference with private rights, but the means adopted must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

22 Ibid.

23 Filipinas Compania de Seguros, et.al. vs. Mandanas, G.R. No. L-19638, June 20, 1966. ". . . we adopt the modern rule that the validity of restraints upon trade or employment is to be determined

by the intrinsic reasonableness of the restriction in each case, rather than by any fixed rule, and that such restrictions may be upheld when not contrary to the public welfare and not greater than is necessary to afford a fair and reasonable protection to the party in whose favor it is imposed'. (Ollendorf vs. Abrahamson, 38 Phil., 585.)

“ . . . The test of validity is whether under the particular circumstances of the case and considering the nature of the particular contract involved, public interest and welfare are not involved and the restraint is not only reasonably necessary for the protection of the contracting parties but will not affect public interest or service'. (Red Line Transportation Co. vs. Bachrach Motor Co., 67 Phil. 77.) (See, also, Del Castillo vs. Richmond, 45 Phil. 483.)”

24 Bernas, Juaquin G., CONSTITUTIONAL STRUCTURE AND POWERS OF THE GOVERNMENT, 1<sup>st</sup> edition, 1991., pp. 48-49. “For an administrative regulation to have the force of penal law it is necessary that such violation be made a crime by the delegating statute itself, that the penalty be provided by the statute itself, and that the regulation be published.”

25 US vs. Barrias, G.R. No. 4349, September 24, 1908. “In the case of The Board of Harbor Commissioners of the Port of Eureka vs. Excelsior Redwood Company (88 Cal., 491), it was ruled that harbor commissioners can not impose a penalty under statutes authorizing them to do so, the court saying: ‘Conceding that the legislature could delegate to the plaintiff the authority to make rules and regulations with reference to the navigation of Humboldt Bay, the penalty for the violation of such rules and regulations is a matter purely in the hands of the legislature.’”

26 Tayug Rural Bank vs. Central Bank of the Philippines, G.R. No. L-46158, November 28, 1986. “When promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, the rules and regulations partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law (Victorias Milling Co., Inc. v. Social Security Commission, 114 Phil. 555; People v. Maceren, L-32166, October 18, 1977, 79 SCRA 462; Daza v. Republic, L-43276, September 28, 1984, 132 SCRA 267). Conversely, the rule is likewise clear. Hence an administrative agency cannot impose a penalty not so provided in the law authorizing the promulgation of the rules and regulations, much less one that is applied retroactively.”

27 Section 11, RIRR. No advertising, promotions, sponsorships, or marketing materials and activities for breastmilk substitutes intended for infants and young children up to twenty-four (24) months, shall be allowed, because they tend to convey or give subliminal messages or impressions that undermine breastmilk and breastfeeding or otherwise exaggerate breastmilk substitutes and/or replacements, as well as related products covered within the scope of this Code.

28 Section 16, RIRR. All health and nutrition claims of products within the scope of the Code are absolutely prohibited. For this purpose, any phrase or words that connotes to increase emotional,

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All health and nutrition claims of products within the scope of the Code are absolutely prohibited. For this purpose, any phrase or words that connotes to increase emotional, intellectual abilities of the infant and young child and other like phrases shall not be allowed.

29 Section 32, RIRR.

It is the primary responsibility of the health workers to promote, protect and support breastfeeding and appropriate infant and young child feeding. Part of this responsibility is to continuously update their knowledge and skills on breastfeeding. No assistance, support, logistics or training from milk companies shall be permitted.

30 Committee on Nutrition, American Academy of Pediatrics.

31 Nutrient Values based on Alaska Brands formulations.

32 Ibid.

33 Philippine Food Composition Tables, 1997 edition.

34 Ibid.

35 ABS-CBN Broadcasting Corporation vs. Commission on Elections  
G.R. No. 133486. January 28, 2000.

"Hence, even though the government's purposes are legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties, when the end can be more narrowly achieved."

36 People vs. Nazario, G.R. No. L-44143, August 31, 1988.

"As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." 11 It is repugnant to the Constitution in two respects: (1) it violates

due process for failure to accord persons, especially the parties targetted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."