

DANONE

Evidence of violations of the International Code of Marketing of Breastmilk Substitutes and subsequent resolutions

Visiting address:

17, boulevard Haussmann
75 009 Paris - France

Mail address:

15, rue du Helder
75 439 Paris Cedex 09 - France
Phone number: +33 1 44 35 20 20

Danonecorporate@Danone.com

BRANDS COVERED BY THIS REPORT

INTERNATIONAL

Aptamil
Nutrilon

LOCAL 'HERITAGE'

Bebelac Gallia
Blédina Malyutka
Cow & Gate Malish
Dumex Milnutri
Sarihusada

RELEVANT LOGOS AND ICONS



GENERAL INFORMATION

Danone is present in over 130 markets and has 4 core businesses: fresh dairy products, water, early life nutrition and medical nutrition. Danone defines early life nutrition (ELN) to mean baby milks (infant formula, follow-on milk, growing-up milk), milk-and fruit-based dessert, cereal, jarred and ready-made baby food.

In 2016, Danone reported that its ELN business accounted for 23% of overall company sales (€5 billion out of a total of €22 billion with sales growth of more 3.5%), placing the company second only to **Nestlé** in the global baby food business.

Earlier company reports reveal that the baby milk segment accounts for more than 80% of Danone's ELN division activity with a special emphasis on the development of second and third stage milks for children over six months old. Complementary foods account for more than 10% of the activity and are marketed mainly in European countries such as France, Italy and Poland.

Multi-brand strategy

In 2015, top brands that contributed most to the division's growth were **Aptamil**, **Nutrilon** and **SGM** while the top countries were Germany, Australia/New Zealand and the Netherlands. These rankings reflect the change in purchasing patterns of consumers in China where parents shifted to foreign made products purchased on line or bought off the shelf in the above top countries through intermediaries. Surprisingly, most of Danone's European sales growth is from exporting products to China. Tightening custom rules may eventually curtail such exports. As part of its multi-brand strategy for China, Danone has paved the way for its international brands, **Aptamil** and **Nutrilon**, to enter the country directly through online and offline sales.

(See also 'The end of the road for **Dumex** in China' at the end of this section.)

On the Indian side, Danone launched **Aptamil** in early 2017 and has plans to launch **Neocate**, a medical nutrition product for infants and young children. Despite the strong Infant Milk Substitutes (IMS) Act of India which bans promotion and past problems relating to the company's independent audit (see "*What happened in India*" in the next column), the company is looking at doubling its revenue in India by 2020. It has announced plans to manufacture products locally as part of its "made in India" growth strategy. Its Indian manufacturing facility will also make products to export to neighbouring countries such as Nepal, Bangladesh and Sri Lanka. Danone owned products in India include **Protinex**, **Dexolac** and **Farex**.

Danone also owns a stable of other local brands which it describes as '*heritage*'. The marketing strategy of Danone's ELN division is to introduce global brands such as **Aptamil** and **Nutrilon** into emerging markets as premium products. Danone deploys marketing strategies of local '*heritage brands*' to different products in other countries. This allows formulations, trademarks and promotional devices to be freely shared among its subsidiaries. Even though a certain marketing platform has been introduced before in one part of the world, they are marketed years later in another as the latest innovation.

In BTR 2014, Danone was reported to be basing its marketing ideas on the 'first 1000 days' concept. It is the same concept UN agencies and non-profit organisations use in public health programmes to improve nutrition for women and young children.

The first 1000 days concept refers to a period when nutrition is recognised to have a long term impact – from conception to the first 2 years of life. It remains the ELN's main marketing strategy and product promotion continues to capitalise on this now famous catchphrase.



When Danone says, "the first 1000 days of life impact on your baby's future health", they mean you should buy their products targeted for that period.

Danone says its activities comply with the Code. This report shows it does not...

Danone says its activities complement breastfeeding and comply with the International Code of Marketing of Breastmilk Substitutes and local laws. This report shows it does not.

What happened in India

The company has internal documents that translate the Code into principles and apply it to day-to-day operations. An "independent" auditor evaluates Danone's compliance. In India, this independent audit was found wanting when auditors appointed by Danone failed to identify a series of payments made to doctors by **Nutrícia India** in violation of the Infant Milk Substitutes (IMS) Act of India. These illegal payments were exposed by Dairyreporter.com.



Exposed! A series of payments to doctors in India.

Danone conceded that there was a "risk of non-compliance". It is pertinent to note that the audit report did refer to this risk but tellingly added in the audit document- "*Nevertheless, necessity to animate the category*". Danone declined to comment.

The experience in India shows that Danone can be careless of the laws of the country it operates in. An analysis of Danone's main governance tool also shows that the standard of behaviour expected of Danone employees in the performance of their duties falls far short of the minimum set by the International Code read together with relevant World Health Assembly Resolutions. (see analysis under "*Where do they differ?*")

The recently issued Guidance on Inappropriate Promotion of Foods for Infants and Young Children has yet to make its debut in Danone's much vaunted governance tools.

Where Do They Differ?

As part of its presumptive commitment to responsible and ethical marketing practices, Danone issued **the Danone Policy for the Marketing of Breastmilk Substitutes** (aka “**Green Book**”; latest version 4, 30 May 2016).¹ The International Code of Marketing of Breastmilk Substitutes forms the basis for the **Green Book** but its intention IS NOT to interpret or replace the International Code but to aid Danone employees in understanding their responsibilities.



“As a company, it is important that we are consistent, clear and transparent as to the standards of behaviour we expect from our employees and partners in the performance of their duties, and to ensure this is done without ambiguity. The Green Book was developed for this purpose.”

The analysis below reveals how Danone misguides its employees on the International Code and creates opportunities for continued promotion of its products.

International Code and subsequent WHA resolutions	Danone Policy (Version 4: 30 May 2016)
<p>1. <i>Applicability & aim (WHA 34.22 [1981] & Article 1)</i></p> <ul style="list-style-type: none"> • Applies to all countries as a minimum standard. • Aims 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, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution. 	<ul style="list-style-type: none"> • Ignores the fact that the Code is a minimum standard and makes an unwarranted distinction between higher risk³ and lower risk countries to guide its marketing conduct. • The Code’s aim is twisted to lend support to Danone’s stated mission - “to bring health through food to as many people as possible”.
<p>2. <i>Scope (Article 2)</i></p> <ul style="list-style-type: none"> • Applies to <ul style="list-style-type: none"> - All breastmilk substitutes including infant formula, follow-up milk, growing-up milk and other milk products marketed for feeding infants and young children up to age of three years.⁴ - Foods and beverages including bottle-fed complementary foods that are marketed or represented as suitable to be fed to infants less than six months old. (Cross branding and certain promotion of foods over six months are forbidden.⁴) - Feeding bottles and teats. 	<ul style="list-style-type: none"> • Covered products include <ul style="list-style-type: none"> - Infant formula, food and beverage for infants up to six months of age. - Feeding bottles and teats. • In higher risk countries, the Code is extended to apply to follow-on formula. The Green Book arbitrarily excludes milks for older babies and products for use by children with special medical needs. • Danone only accepts that complementary foods and beverages must not be advertised or promoted for use by infants under six months of age in higher risk countries.

1 http://www.danone.com/fileadmin/PUBLICATIONS/Danone_Policy_for_the_Marketing_of_BMS.pdf; accessed 6/3/2017

2 Danone’s report on alleged non-compliance with The WHO Code (The Green Book), For the Period 1 Jan to 31 Dec 2014.

3. Higher risk countries are defined by Danone as countries that meet either of the following criteria: a) More than 10 per 1000 (under 5 years of age) mortality rate; or b) More than 2% acute malnutrition (moderate and severe wasting) in children under the age of 5 years. A list of higher risk countries appears at the end of the Green Book.

4. Guidance on ending the inappropriate promotion of foods for infants and young children (WHA69.7 Add.1); Recommendation 2

3. *Information and Education (Article 4, WHA 58.32 [2005] & Guidance 69.7Add.1 ⁴)*
- Requires inclusion of all necessary messages in information and education materials as specified under article 4.2 of the Code.
 - Article 4.3 read together with WHA 58.32 & Guidance 69.7Add.1 call for avoidance of conflict of interest in infant and young child health programmes so information and education materials sponsored by baby food companies should not be allowed.
 - WHA 58.32 requires information to be given that powdered infant formula may contain pathogenic microorganisms and must be prepared and used appropriately.

- Commitment related to information and education materials does not fully cover all requirements listed in Article 4.2; in particular, in relation to use of other products covered by the scope of the Code, other than infant formula.
- Ignores call for avoidance of conflict of interest and continues to allow the distribution of information and education materials bearing company name and logo to pregnant women and mothers through health care organisations.
- Omits any mention about the need for health care personnel, parents and other care givers to be warned about the known public health risk, as described in WHA 58.32.

4. *Promotion (Articles 5 & 6; WHA 58.32 [2008] & WHA 63.23[2010])*
- Advertising and other forms of promotion to the general public, including contact with pregnant women and mothers are explicitly prohibited. This would include gifts and incentives offered via mum or baby clubs, promotion through the Internet, social media and other electronic means of communication, as well as within the health system.
 - WHA 58.32 & WHA 63.23 read together prohibit nutrition and health claims for breastmilk substitutes and foods for infants and young children, except where specifically provided for in Codex Alimentarius standards and national legislation.

- Trained staff are allowed to respond to queries from members of Danone's mums and baby clubs via phone, helplines, websites and social media. The Green Book contains no acknowledgment that communication with parents, especially any that includes promotional materials through such channels should be prohibited. This opens the door to use of product logos, idealising images of young babies and direct promotion of other products covered by the scope of the Code, other than infant formula.
- The Green Book contains no reference to claims about product formulations even though such claims abound in Danone materials.

5. *Free supplies (Articles 6.6 & 6.7; WHA 47.5 [1994] & WHA 63.23 [2010])*
- No free or low-cost supplies of breastmilk substitutes to any part of the health care system.
 - Any breastmilk substitutes required during emergency situations need to be purchased, distributed and used according to strict criteria.

- On the basis of a written request,
 - supplies of covered products may be made for use in or outside a health care organisation.
 - Danone may donate covered products in emergency and disaster situations through government channels or internationally recognised aid agencies.

6. *Financial or material inducements (Article 7.3)*
- No financial or material inducement to promote products taking into consideration resolutions WHA 49.15 & WHA 58.32 to ensure avoidance of conflict of interest.

- If allowed under local laws, inexpensive gifts and practice-related equipment may be given.
- Inexpensive gifts unrelated to health worker's practice in acknowledgment of significant national, cultural or religious events may also be provided.

7. *Sponsorship (Article 7.5; WHA 49.15 [1996] , WHA 58.32 [2005] & Guidance 69/7 Add.1 ⁴)*

- Sponsorship, financial support and other incentives for programmes and health professionals working in infant and young child health should not create conflict of interest.

Editorial note: Experts are of the opinion that such funding undermines the work of health professionals who have a fiduciary duty to safeguard the health and interest of their patients.⁵ Company involvement provides a way to gather health worker contact details and to promote products with information that is not scientific and factual.

- Sponsorship of events such as symposia, congresses or other scientific or professional meetings organised by Danone or by third parties are allowed. Health workers may be reimbursed for travel, meals, accommodation and registration fees.
- If allowed under local laws, bona fide consulting arrangements with health workers may be entered into for reimbursement of their service.
- Funds are also allowed to support “*genuine independent research*”, advancement of science and education or patient and public education in relation to covered products.

8. *Marketing Personnel (Article 8)*

- In systems of sales incentives for marketing personnel, the volume of sales of products within the scope should not be included in the calculation of bonuses, nor should quotas be set specifically for sales of these products. This should not be understood to prevent the payment of bonuses based on the overall sales by a company of other products marketed by it.
- Marketing personnel may not perform educational functions in relation to pregnant women and mothers of infants and young children. This should not be understood as preventing such personnel from being used for other functions by the health care system at the request and with the written approval of the appropriate authority of the government concerned.

- No restrictions on quotas for product sales
- Employees such as healthcare nutrition representatives and partners may provide education and support in cooperation with health care organisations at the request and with the written approval of the appropriate authority.

Editorial note: Functions are more important than job descriptions or titles. If the role of an employee or partner is to access mothers and to talk about a product or the benefits of a certain formulation, they should be deemed as marketing personnel.

Under Article 8.2, approval of the appropriate authority is only relevant for other functions unrelated to education that are carried out by marketing personnel. The issue of obtaining approval for other employees and partners to offer “*support*” other than education does not arise.

9. *Labelling (Article 9 & WHA 58.32 [2005])*

- Where applicable, WHA 58.32 requires explicit warning on the packaging that powdered infant formula may contain pathogenic micro-organisms.

- There is no mention of the need to warn about reference to this known public health risk on the label of infant formula in any setting.

10. *Monitoring Code compliance (Article 11.3)*

- Independent of any measures taken for implementation of the Code, manufacturers and distributors to take steps to ensure that their conduct at every level conforms to principles and aim of the Code.

- Danone will only take steps to confirm that their conduct at every level conforms to its Policy, not to the Code.

5. [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(17\)30277-5/fulltext?elsca1=etoc](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)30277-5/fulltext?elsca1=etoc)

What about FTSE4GOOD?

On June 7, 2016, the FTSE4Good Index announced the inclusion of Danone into an index that measures the performance of companies demonstrating strong environmental, social and governance practices. Under the FTSE4GOOD Breastmilk Substitute Criteria, a company does not have to comply with the international minimum standards as set by the Code and resolutions. Danone is only required to show that its practices on the ground are in line with stated policies.

By implication, FTSE's assessment endorsed Danone's weak interpretation of the Code and resolutions and is encouraging Danone to systematically violate the Code and national laws.

It rides roughshod over all other efforts to hold Danone accountable for its marketing excesses. It provides companies like Danone with a whitewashing tool which undermines government resolve to give effect to the Code and resolutions.

Dubious Intentions!

BTR questions the approach taken by the FTSE4Good Index and calls for the short comings of the FTSE4GOOD Breastmilk Substitute Criteria to be addressed.

The illustration below, taken from the main Danone website (accessed 15/3/2017), captures the unrelenting way through which Danone is pushing its products everywhere. There are actual violations on the ground which FTSE4GOOD failed to take into account. Where outright promotion is not allowed, the company finds other ways to undermine breastfeeding. Such practices are also ignored by FTSE4GOOD.



Idealisation of bottle feeding? And strong-armed tactics?

The end of the road for Dumex in China



In August 2013, a statement jointly issued by the New Zealand government and Fonterra warned that batches of ingredients supplied by Fonterra to four Danone plants in Asia-Pacific might be contaminated with *Clostridium botulinum* bacteria. This led Danone to recall selected infant formula products from sale in eight markets (New Zealand, Singapore, Malaysia, China, Hong Kong, Vietnam, Cambodia and Thailand). The alert was lifted several weeks later as when authorities in New Zealand concluded that there was no *Clostridium botulinum* in any of the batches concerned.

Although the warning turned out to be a false alarm, sales for the flagship **Dumex** infant formula were seriously affected in China, where the 2008 melamine-in-milk scandal was still fresh in people's minds. Business never revived since the reputation of the **Dumex** business unit also took a bad dent from being fined in a government price fixing probe in 2013.

In December 2015, Danone decided to give up efforts to revive the China **Dumex** business on its own. It entered into an agreement to sell the ravaged unit to Yashili International Holdings. In return, it received a 25% stake in Yashili and raised its 9.9% stake in China Mengniu Dairy, (Yashili's indirect parent) by another 2%. This move, according to a market analyst, "removes a problem business from **Danone's** headline numbers in the knowledge that investors will overlook the Profit and Loss impact as 'one-off' and 'non-cash'. It draws to a close the problems experienced with **Dumex** and follows a longstanding **Danone** approach of solving problem businesses by simply shedding them."

From 2016, the **Dumex** brand will be under the control of Yashili, cementing Danone's shift towards premium imported baby food.

Editorial Note: Danone subsequently terminated its existing supply contract with Fonterra and initiated arbitration proceedings for compensation. Neither the proceedings nor outcome of this arbitration has been made public.