

UK

Code Violations • 2013

How companies violate the International Code of Marketing of Breastmilk Substitutes and subsequent WHA Resolutions and UK measures

“The UN Committee on the Rights of the Child recommends that the State party implement fully the International Code of Marketing of Breast-milk Substitutes....The Committee is concerned that implementation continues to be inadequate and that aggressive promotion of breastmilk substitutes remains common.”

LOOK WHAT THEY'RE DOING!



Advertising, mum and baby clubs, sponsorship, direct mail

Companies spend a fortune on promotion, undermining breastfeeding, inflating product prices and forging links with health workers and parents.

CODE OVERVIEW

The *International Code of Marketing of Breastmilk Substitutes* aims to promote safe and adequate nutrition for infants and young children, by protecting breastfeeding and ensuring appropriate marketing of products under its scope.

The Code applies to all products marketed as partial or total replacement for breastmilk, such as infant formula, follow-up formula, special formula, growing-up milk, cereals, juices, vegetable mixes and baby teas. It also applies to feeding bottles and teats.

The Code:

- Bans all advertising and promotion of products to the general public.
- Bans samples and gifts to mothers and health workers.

- Requires information materials to advocate for breastfeeding, warn against bottle feeding and NOT to contain pictures of babies or text that idealise the use of breastmilk substitutes.
- Bans the use of the health care system to promote products.
- Bans free or low-cost supplies.
- Demands that product information be factual and scientific.
- Bans sales incentives and contact with mothers.
- Requires labels NOT to discourage breastfeeding and to inform fully about the correct use of infant formula and the risks of misuse.

The Baby Feeding Law Group (BFLG) consists of the leading UK health worker organisations and mother support groups. Baby Milk Action coordinates the BFLG monitoring project. Examples shown date from 2012 and 2013 unless otherwise stated.

Promotion is funded by formula sales: No promotion = Cheaper Formula

UNITED KINGDOM



COUNTRY PROFILE

Total population: 63.2 million (2011 census)
Population under 1 year¹: 795,000
Population 1-4 years¹: 3,063,000
Annual number of births¹: 807,300 (prov.)
Infant mortality rate (per 1,000 live births)¹: 4.3 (prov.)
Breastfeeding initiation²: 81%
Exclusive breastfeeding at 6 months²: 1% (one %)
Exclusive breastfeeding at 4 months²: 12%
Any breastfeeding at 6 months²: 34%

References: 1. *Vital Statistics: Population and Health Reference Tables, Autumn 2011*, Office of National Statistics. (Figures for 2010, except (prov.) = provisional figures for 2011).
2. *Infant Feeding Survey - UK, 2010*, NHS Information Centre.

Small changes - big savings

'Calculations from a mere handful of illnesses where breastfeeding is thought to have a protective effect revealed potential annual savings to the National Health Services from a moderate increase in breastfeeding rates of about £40 million per year. The true cost savings are likely to be much higher.'

Preventing disease and saving resources: the potential contribution of increasing breastfeeding rates in the UK, UNICEF UK, 2012.

Failure to regulate marketing in the UK

The United Nations Committee on the Rights of the Child stated in 2008 that implementation of baby food marketing standards in the UK *'continues to be inadequate and that aggressive promotion of breastmilk substitutes remains common.'*

Mothers have a right to accurate, independent information on infant feeding, however they feed their children. This is undermined by company promotion - and the millions of pounds companies spend on marketing goes onto the price of formula. Meanwhile the NHS picks up the bill to treat the greater rates of illness amongst babies fed on formula (see box, left).

The UK is classified by the International Baby Food Action Network (IBFAN) in category three for implementation of the *International Code of Marketing of Breastmilk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly, indicating there are few provisions in law (see box for details).

Even the marketing requirements that are in place are not working well. An Independent Review Panel (IRP) commissioned by the Government reported in March 2010 about concerns with the national measures and suggested there need to be *'steps taken to address these.'* The IRP report records that LACORS, the umbrella body for Trading Standards, stated: *'One of the major problems for enforcement officers is the use of advertising and promotional material which blurs the distinction between follow-on formula and infant formula.'*

Shortly after the IRP report, LACORS (now known as the Local Government Association) wound up the working group of enforcement officers responsible for regulating baby food companies, citing cutbacks. Complaint handling has now been contracted out to the Citizens Advice Bureau; even though this has forwarded numerous complaints to Trading Standards, it is unusual to receive a response from enforcement officers.



The follow-on formula loophole

Danone advertises its Aptamil brand on television (left) with idealising claims: *'Benefiting from 30-years experience in breastmilk research, it supports your baby in her new discoveries. Aptamil follow-on helps support your baby from the inside.'*

No legal action was taken over this because the product shown was the fourth one in the range, as shown on Danone's Aptaclub parenting website (above), and so a follow-on formula: the UK measures only prohibit the first three products being advertised. However, the measures require companies to label the products differently and to put the words *infant formula* or *follow-on formula* in text at least as large as the brand name (page 4). Danone totally ignores these requirements so that promoting the brand name promotes all products in the range.

The baby milk marketing measures in the United Kingdom

The UK Government voted for the adoption of the *International Code of Marketing of Breastmilk Substitutes* at the World Health Assembly in 1981 and has repeatedly restated this support in backing subsequent Resolutions.

However, the measures introduced in the UK are narrower in their scope (for example, feeding bottles and teats are not included) and do not include many of the provisions of the World Health Assembly requirements. The measures consist of a law and associated *Guidance Notes*.

- The law is the *Infant Formula and Follow-on Formula Regulations (2007)*, deriving from European Commission Directive 2006/141/EC of 22 December 2006.

These Regulations have been adopted separately by the four countries of the UK (England, Northern Ireland, Scotland and Wales), but the text is the same.

The current law contains many of the same loopholes as the previous version, adopted in 1995, despite all health professional bodies, Trading Standards and the Government's own Scientific Advisory Committee on Nutrition (SACN) calling for these loopholes to be closed.

- The *Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007 (as amended)* were introduced by the Food Standards Agency in 2008. The law and *Guidance Notes* together make up the UK measures.

The *Guidance Notes* state they *'have been produced to provide advice on the legal requirements of the Regulations and should be read in conjunction with the legislation itself.'*

The *Guidance Notes*, introduced after public consultation, including with the industry, *'aim to help industry, enforcement officers and other interested parties interpret the provisions of the Infant Formula and Follow-on Formula (England) Regulations 2007'*. However, they also state, *'The text should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power.'*

Companies seem to think they can ignore the *Guidance Notes* and enforcement officers appear reluctant to take cases to court for authoritative rulings to be made.

The Minister for Public Health of the time informed Parliament* on 26 January 2008: *'That guidance is now operational, and it shows how the Regulations should be interpreted.'*

*See Hansard: www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080116/halltext/80116h0005.htm



Branding

The *International Code* prohibits companies from promoting all breastmilk substitutes and companies should abide by this independently of national measures (see box). While the UK measures allow follow-on formula to be advertised, they prohibit companies from promoting brands used for infant formula, but companies ignore this.

Hipp labels its formulas similarly and promotes them with idealising claims (left). It also refuses to warn that powdered formula is not sterile or give correct instructions on how to reconstitute formula to kill any harmful bacteria. (Hipp also labels teas as being for use from one week of age.)

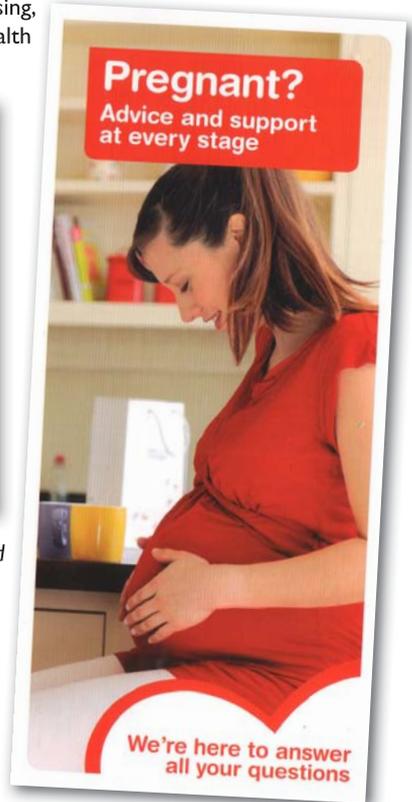
Danone has taken cross promotion of its Cow & Gate brand to the next level, using its heart logo not only on products and advertising, but also on leaflets in health facilities, sponsored magazines and websites, its own websites for health workers and the public, its mother and baby club and so on.



Danone's Cow & Gate branded Facebook page offers 'Great advice and support from our experts and other mums, from pregnancy to parenthood'.



Leaflets like that shown right have been distributed to health facilities and, at first sight, appear to be offering advice and support on pregnancy. However, they are a ruse to encourage pregnant women to sign up to the Cow & Gate branded mother and baby club (see page 6). A Cow & Gate soft toy is offered as an inducement to join. Danone also has a club to



promote its Aptamil formula brand - see if you can spot the Aptamil polar bear free gift on the front cover. Cute animals are also featured on labels in violation of the UK measures.

Danone is perhaps more focused now on internet advertising, offering 'expert advice and support' and linking to its own 'parenting' site, which it claims 3,000 mums join every week. It then sends emails scheduled to their due date with product promotion (right and page 7).

Danone also sponsors the *Feeding for Life Foundation*, whose website and journal (distributed with *Community Practitioner*, the health visitors' journal) are branded with the Cow & Gate heart logo. Both direct health workers to Danone's Cow & Gate branded *In Practice* website, where misleading claims are used to encourage health workers to recommend products to parents.

The International Code applies in the UK

Article 11.3: Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them.



Retailers, price promotion and point-of-sale



Major retailers have been found promoting infant formula with price reductions, which are prohibited by the UK measures (the *International Code* prohibits promotional price reductions for all breastmilk substitutes, feeding bottles and teats, not just infant formula).

Retailer Tesco apologised for promoting infant formula with a price drop in September and October 2011 (right). In February 2013 Aldi said it would remove price promotions (left) and ensure



it complies with the UK Regulations in future. These promotions are centrally generated. A more regular occurrence is local managers putting infant formula with damaged packaging or nearing its use-by dates in discount bins.



Boots promotes follow-on formula and feeding bottles and teats, such as the shop window promotion in January 2013 (left). This was backed up by a Facebook campaign advertising formula as 'essential' to 'new mums' (though it showed the follow-on formula package). The ASA investigated a complaint from Baby Milk Action and said that as Boots agreed not to repeat the advertising no ruling would be published.



Tesco also promotes follow-on formula with in-store promotional devices. In December 2012 it violated the UK measures by placing this promotion next to the infant formula (right: the light blue



product is follow-on formula, the dark blue is infant formula).



'We're satisfied that the way we're displaying the product conforms to all legal and regulatory standards, and therefore will not be amending this on our website.'

Ocado demonstrates its contempt for the *International Code*, February 2013.

Placement of formula

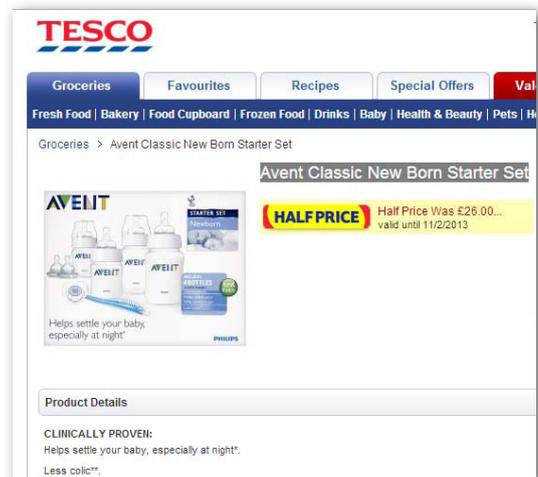
GN 53 [with reference to RG 20]: 'shelf-talkers' (attachments that add a company's logo or sales message to the edge of a shelf) and other in-store promotional devices for follow-on formula must not be used in the vicinity of infant formula. Follow-on formula should be located at a different part of the store to infant formula. If this is not possible they should be clearly separated in physical location.

In response to Baby Milk Action's complaint about the breaches of the regulations, Tesco said in March 2013 that it will no longer display shelf-talkers and other promotional materials for follow-on formula and similar milks in the vicinity of infant formula. It added that staff have been retrained.

Tesco confusingly said its policy on placement is: 'first milk and follow-on milk should not be merchandised together. It is not possible to have them sold at different parts of the store, but we do separate their location as far as possible.'

Placing the products next to each other (so they are actually touching) may fit with Tesco's definition of 'as far as possible', but does not provide the clear separation required by the UK measures.

Tesco (like online retailer Ocado, left) also promotes feeding bottles and teats with price promotions. The *International Code* prohibits such promotion, but the companies disregard the requirement to abide by this independently of government measures.



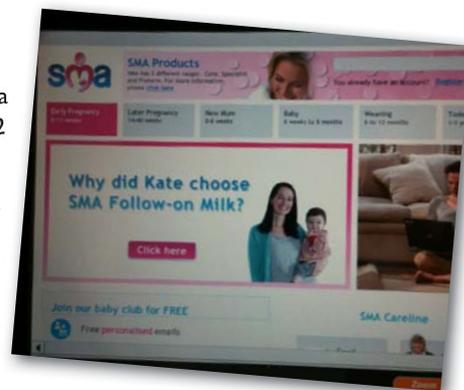
Right: Tesco promotes Avent feeding bottles with claims it says are 'clinically proven', including 'Like natural breastfeeding your baby controls the flow of milk', 'Helps settle your baby, especially at night' and even that babies fed with the bottle experience 'less colic'.

The health care system and health workers

Pfizer Nutrition and Danone are particularly active in targeting health workers, using a variety of strategies. (Pfizer Nutrition has been controlled by Nestlé since December 2012 and Baby Milk Action has found targeting of health workers is becoming more aggressive.)

The companies have found ways into the health care system through contracted out services such as bedside media players and leaflet dispensers.

Pfizer Nutrition, for example, was found advertising its SMA formula on the bedside media players in a maternity ward (right). This was the default screen displayed. When the hospital authorities were alerted to this promotion, they discovered the advertising had been appearing for the past 6 months.



Danone has placed leaflets in dispensers operated for the National Health Service, such as the 'Mum-to-be' example shown left. Free gifts are offered to women who sign up to the Cow & Gate baby club. Baby Milk Action raised this with Danone and Trading Standards, which also took it up with Danone. These leaflets broke the UK measures in several regards (see box).

Danone promised Baby Milk Action in May 2012 that it would stop distributing materials for the public through the health care system and subsequently confirmed this policy will apply in all countries - although the picture shown left was taken in October 2012.

Both the Code and the UK measures allow companies to provide 'scientific and factual' information to health workers about their products. However, the information they provide is generally promotional with idealising health and nutrition claims.



The above advertisements from *Community Practitioner*, the journal for health visitors, show how this restriction is disregarded: Danone, HIPP and Pfizer Nutrition each graphically present their formula as better than competing brands.

The Advertising Standards Authority refuses to investigate advertising in health professional journals on the grounds that editors should take responsibility for advertising.

The companies also offer information services, branded with formula names. Danone has both Aptamil and Cow & Gate versions (see page 3). Pfizer Nutrition offers health workers 'Resources for Mums' (left) and tells health workers its formula is better than other brands - a claim the ASA ruled to be misleading when it was made in an advertisement for the follow-on formula in the range.

These sites also encourage health workers to direct parents to company websites and telephone 'carelines' for support. In December 2011, BFLG exposed that Danone was trying to recruit midwives to staff its 'careline'. It offered to pay them through an agency so they could hide the fact they were working for a baby food company. It is not known how many midwives are now also working for Danone.

Company materials and donations in the health care system

Article 24 of the law relates to the *Provision of informational and educational material dealing with the feeding of infants* and can be applied to the leaflets placed in health facilities and the information materials being offered free to health service users (emphasis added):

(4) No manufacturer or distributor of an infant formula shall make a donation of any informational or educational equipment or materials except in accordance with the following conditions—

- (a) the donation shall be made following a request by the intended recipient;
- (b) the donation shall be made with the **written authority of the Secretary of State** or in accordance with guidelines drawn up by the Secretary of State;
- (c) **the equipment and materials shall not be marked or labelled with the name of a**

proprietary brand of infant formula; and

(d) the equipment or materials shall be distributed only through the health care system.

No guidelines have been drawn up and the Secretary of State has not so far given written authority for donations – nor should this be given because of the conflict of interest.

World Health Assembly (WHA) resolution 49.15 of 1996, calls upon governments to ensure that 'financial support for professionals working in infant and young child health does not create conflicts of interest, especially with regard to the WHO UNICEF Baby-Friendly Hospital Initiative';

World health Assembly (WHA) resolution 58.32 of 2005, further urges Member States 'to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflict of interest.'

Mother and baby clubs

In addition to advertising to pregnant women and parents, companies use a range of methods to encourage them to join company mother and baby clubs.

These strategies violate the *International Code* and sometimes the narrower UK measures (see box).

The internet has become the favoured way that baby food companies target parents in the UK. Danone uses advertisements and sponsored links across the internet and has pages on Facebook. The internet advertisement shown right offers 'free goodies' as an inducement to mothers, including a Cow & Gate branded soft toy (did you spot the Aptamil polar bear on the front cover of this report?).

Pfizer Nutrition has entered into smartphone apps to target the public (below, right).

In all cases they are seeking to reach women when they are pregnant, using free gifts and the offers of information on pregnancy and parenting to entice them to sign up on the company's own websites. Danone claims that 3,000 mothers sign up to its Cow & Gate branded site every week.



Join the Cow & Gate Mum & Baby Club

Guiding you through pregnancy and beyond

Whether you're a mum-to-be or a new mum, the Cow & Gate Mum & Baby Club is here to support you every step of the way. With information and advice sent by email or post, you'll learn about everything from pregnancy, to baby care and toddler development. You can share your experiences and make new friends in our forum. You'll also get a free Cow & Gate pregnancy diary, free money off vouchers and much more!

Join now

Discover, share & celebrate your amazing journey from bump to toddler

Weekly emails packed full of advice for your stage of pregnancy

Great mailings throughout your pregnancy and beyond

Friend finder to help you find mums-to-be in your area

Free cuddly cow* & pregnancy diary for you important dates**

Over 3,000 mums join the Cow & Gate Mum & Baby Club every week!



Companies compete with each other - and the health service and mother support groups - to offer resources, such as materials to download, video clips, telephone 'carelines', online chat and so on, as well as free gifts and packs with samples, usually of complementary foods - which some companies send to mothers when their babies are around three months old (page 8).

Join Aptaclub

Join Aptaclub for expert tailored advice delivered to your inbox or front door

Available to UK residents only

Helping you to give your baby a healthy start

If you've been enjoying getting to know our experts and other mums here on Facebook, then why not join Aptaclub?

As an Aptaclub mum, you'll receive tailored, expert advice delivered straight to your inbox or front door, as well as a free huggable polar bear. You'll also be able to take part in our popular pregnancy and baby forums. Join now to feel confident and prepared at every stage of pregnancy and beyond.

Expert advice tailored to your stage and a free huggable polar bear when you join.

JOIN NOW

HiPP organic

Register Now

Having a baby is a really exciting and special experience, and at the HiPP Baby Club you will find everything you need to know about pregnancy and your new baby. If you are pregnant or your baby is under 12 months old, join our club today!

The sooner you join, the more benefits you will enjoy including:

- Expert personalised pregnancy and baby advice and development calendar
- Exclusive offers and competitions
- Regular baby development emails
- FREE 1st year record book
- A-Z of pregnancy & baby health
- Chat to other mums and health experts in the HiPP Chat forum
- FREE HiPP Organic samples and money off coupons (sent when your baby is 17 months old)

Join Now!

Direct marketing, the *International Code* and the UK measures

Companies using direct marketing are violating Article 5.5 of the *International Code*, which states they:

'should not seek direct or indirect contact of any kind with pregnant women or with mothers of infants and young children.'

Gifts violate Article 5.4 of the Code:

'Manufacturers and distributors should not distribute to pregnant women or mothers of infants and young children any gifts of articles or utensils which may promote the use of breastmilk substitutes or bottle feeding.'

Gifts are also prohibited by Article 23 the UK Infant Formula and Follow-on Formula Regulations:

'No manufacturer or distributor of any infant formula shall provide for promotional purposes any infant formula free or at a reduced or discounted price, or any gift designed to promote the sale of an infant formula'

Direct mail - timed to the baby's due date

Central to the strategy of signing up pregnant women and mothers to baby clubs – and asking for the baby's due date – is a schedule of emails and packages.

In the build up to birth, these may include promotion of formula to be ready for the newborn, such as Danone's email (detail, right) promoting a formula kit for 'Complete peace of mind for the first 48 hours'.

Pfizer Nutrition states on sign up: 'By joining SMA Know-how, you are agreeing to receive information on SMA products, including infant formula'.

Don't miss out on our milks information

As well as all of the practical advice and support we offer to new mums, we're also experts when it comes to baby milks. To learn more about our milks, which are nutritionally tailored to support every stage of your baby's development, you'll need to update your preferences.

[REQUEST INFORMATION ON APTAMIL BABY MILKS](#)

Danone and Hipp allow mothers to opt out of receiving information on formula, but emails contain plenty of links to encourage mothers to visit the site where the formula is promoted. Danone's Aptacub email coinciding with the baby's due date also encourages the new mother to change her preferences to receive information on formula (left).

The emails tailored to breastfeeding mothers pose questions in the early weeks such as, 'How do I know if my baby's getting enough milk?' and 'Does my baby have colic?' The 'colic' email for mothers who have opted in for formula information, includes a promotion of Cow & Gate Comfort infant formula, with the slogan 'Easy to digest for tiny tummies'.

The emails try to steer mothers through the range of products, asking at week 9: 'What should I do if my baby's still hungry after a feed'. Danone is ready with its formula for 'hungry babies' (though there is no evidence

proving this is better for so-called 'hungry babies'). Whether mothers have opted for formula information or not, emails and packages promote Cow & Gate weaning foods for use from 4 months.

How is feeding going?



On 28 November 2012, the ASA upheld a complaint brought by Baby Milk Action, against a Pfizer Nutrition email campaign (see box).

The email headed 'How is feeding going?' was aimed at mothers with four-week-old babies and played on fears about milk intake and possible problems with breastfeeding: 'Feeling sore?... If the pain continues or your nipples start to crack or bleed...'. After directing mothers to their health worker or the SMA 'careline' it finished by asking 'Thinking of bottle feeding?' and promoted SMA infant formula with a claim it contains a fat blend closer to breastmilk.

Thinking of Bottle Feeding?

If you can't breastfeed, or choose not to, SMA First Infant Milk is scientifically formulated to meet your baby's nutritional needs when your baby is not breastfed or for combination feeding. It's suitable from birth and contains a protein profile and a new fat blend closer to that of breast milk, plus Omega 3&6 LCPCs.

After directing mothers to their health worker or the SMA 'careline' it finished by asking 'Thinking of bottle feeding?' and promoted SMA infant formula with a claim it contains a fat blend closer to breastmilk.

All promotion of infant formula breaks the Advertising Code

ASA ruling against direct marketing:

'The ad must not appear again in its current form. We told [the company] not to produce marketing communications for infant formula except in a scientific publication or, for the purposes of trade before the retail stage, a publication of which the intended readers were not the general public.'

Ruling A12-197524 against the Pfizer Nutrition email promoting SMA formula shown above (emphasis added)

Recommendations

In view of the fact that aggressive promotion of breastmilk substitutes remains common in the UK, the Government should:

- implement the *International Code* and Resolutions in legislation as called for by the UN Committee on the Rights of the Child, the Baby Feeding Law Group, UNICEF, the World Health Assembly and others.
- at the very least, 'take steps' to end the major problems experienced by enforcement officers, as described in the Independent Review Panel report, by applying the same restrictions to follow-on formula marketing as apply to infant formula.
- reinstate the working group of Trading Standards home authorities so that coordinated action can be taken against the many activities that violate the current narrow measures and encourage legal action to be taken against repeat offenders.
- remind companies and enforcement authorities that the *Guidance Notes* were introduced to show how the *Infant Formula and Follow-on Formula Regulations (2007)* should be interpreted and should be respected.

This pamphlet is part of a series of IBFAN pamphlets which highlight violations of the *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant World Health Assembly Resolutions in selected countries. The International Code Documentation Centre coordinates IBFAN's global monitoring project. Baby Milk Action is the UK member of IBFAN and coordinates the Baby Feeding Law Group (BFLG) monitoring project. BFLG consists of the leading UK health worker organisations and mother support groups.



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