

COTE D'IVOIRE – IVORY COAST LAW

Decree No 2013-416 of 6 June 2013 on Regulation of the Marketing of BMS

THE PRESIDENT OF THE REPUBLIC

Considering:

- The Joint Report of the Minister of Health and Fight Against AIDS, the Minister of Commerce, Handicrafts and Promotion of MSEs, the Minister of Industry and the Minister of Solidarity, Family, Women and Children;
- The Constitution;
- Law 63-301 of 26 June 1963 on Fraud repression in the sale of merchandise and falsification of foods and agricultural products;
- Decree No 83-080 of 3 August 1983 on implementation of Law 63-301 of 26 June 1963 on Repression of fraud in the manufacture and marketing of dairy products;
- Decree No 92-487 of 26 August 1992 on Labelling and presentation of food products;
- Decree No 2012-625 of 6 July 2012 on Attributions of Members of Government;
- Decree No 2012-1118 of 21 November 2012 on Appointment of the Prime Minister;
- Decree No 2012-119 of 22 November 2012 on Appointment of Members of Government;
- Having consulted the Council of Ministers (cabinet),

HEREBY DECREES:

CHAPTER ONE General Provisions

Article 1 – For the purpose of this Decree the following definitions apply:

Health worker means a person working or receiving training in a health care facility or a social institution, at a professional or non-professional level, including volunteers without pay;

Artificial feeding or replacement feeding means the process of feeding infants and young children who are not breastfed, but who receive a diet that provides the nutrients they need until they reach an age when they can be fed fully on foods consumed by their family;

Complementary food means any food produced industrially or home made that is suitable as a complement to breast milk or to BMS, when breast milk or BMS are no longer sufficient to satisfy the nutritional needs of an infant;

Marketing means the promotion, distribution, sale and advertising of a product, including product public relations and information services;

Distributor means any person or corporation who markets a product at the retail or wholesale level;

Sample means a single unit or small quantity of a product provided free of charge;

Container means any form of packaging of products for retail sale, as normal units, including the wrapping;

Label means any drawing, mark, logo, picture or description, in writing, stencilled, marked, stamped or printed on a product or affixed to it;

Manufacturer means a person or corporation who manufactures a product, either directly or through an intermediary or agent or person controlled by said manufacturer or to whom it is linked by contract;

Infant means a child from zero to twenty-four months age;

Breastmilk substitute means any food marketed or presented in any way as a partial or total replacement of breastmilk, whether or not suitable for that purpose;

Health care system means the governmental, non-governmental or private institutions or organisations that, directly or indirectly, provide health care to mothers, infants and pregnant women, as well as crèches and other childcare institutions and private healthcare providers and pharmacies.

Article 2 – This decree is intended to regulate the marketing of breastmilk substitutes.

Article 3 – This decree shall apply to the marketing and practices related thereto of the following products:

1. **Breastmilk substitutes**, including formulas for infants and young children;
2. **Other milk-based products**, foods and drinks, including **complementary foods**, when marketed or presented in any manner as suitable, with or without modification, to partially or totally replace breastmilk;
3. **Feeding bottles, teats** and similar products.

CHAPTER 2

Promotion of breastmilk substitutes

Article 4 – No manufacturer or distributor shall be allowed to promote products listed in Article 3 of this Decree, directly or through any person or corporation acting on his behalf.

Promotional practices shall include but not be limited to the following:

- Advertising in all its forms, as enticement or not, in particular via television, radio, written press, posters, cinema and electronic media, including the internet;
- Tactics to promote direct sales to consumers at the retail level, such as special displays, discounts, prizes, special sales, loss sales and coupled sales;
- Gifts of articles such as pens, calendars, posters, notepads, growth charts, toys and any other advertising gadget that refers to these products or encourages their use;
- Samples of these products;
- Donating or providing at low price any of these products to health workers or to a public or private healthcare institution. This notwithstanding, the Ministry of Health shall, when necessary, be entitled to enter into specific agreements with manufacturers

or distributors for the provision of donations of said products to recognised welfare institutions;

- Promotion of infant formula or any of these products within the healthcare system, except for the dissemination of information to healthcare professionals;
- Exhibiting these products, by means of posters or pictures, or by distribution of materials provided by a manufacture or distributor, within units of the healthcare system;
- Contact between the public and marketing staff who are carrying out commercial promotion of these products;
- Donating or distributing information and education materials on infant feeding;
- Donating equipment bearing the name or logo of a manufacturer or distributor of a product under Article 3 within a unit of the healthcare system, except if specifically authorised to do so by the Ministry of Health;
- Offering gifts or cash benefits in relation to these products.

CHAPTER 3

Packaging and labelling of breastmilk substitutes

Article 5 – Information about products listed in Article 3 of this Decree presented on the container or labels shall be visible, readable, indelible, in French, traceable, and must not give the impression or make believe that the products are equivalent to, comparable to or better than breastmilk.

Article 6 – The container or labels of products listed in Article 3 of this Decree shall contain the following information:

- Method of preparation and use of the product;
- A warning about the health risks of inappropriate preparation;
- Conditions of storage and conservation before and after opening the container;
- Lot number and manufacturing date, as well as the date of expiry of the product;
- Name and address of the manufacturer and the distributor, if the manufacturer does not have an establishment in Cote d’Ivoire;
- Description of the composition and nutritional analysis of the product, ingredients used and the age as of which the product is recommended.

Article 7 - The container or labels of products listed in Article 3 of this Decree shall contain the following specific warnings:

“Breastmilk is the ideal food for infants”

“To be used only on the advice of a health professional”.

Article 8 – Containers and labels shall not bear words such as “humanised”, “maternalised” or any other similar concept qualifying products listed in Article 3 of this Decree.

Labels shall not bear any kind of representation of an infant nor any illustration that could idealise artificial feeding.

Article 9 – Containers or labels of complementary foods shall include the following warnings:

“This product must not be given to infants below the age of six months”;

“Breastfeeding should continue up to at least the age of two years”.

Article 10 – Containers or labels of condensed or sweetened concentrated milks shall include the following warning: “IMPORTANT NOTICE: This product is forbidden for infants under the age of 12 months.”

Article 11 – Containers or labels of skimmed and semi-skimmed low-fat milks, whether liquid or in powder, shall contain the following warning: “IMPORTANT NOTICE: This product is forbidden for infants under the age of 12 months. Before that age, consult a health professional.”

Article 12 - Containers or labels of products listed in Article 3 of this Decree shall bear the following warning: “IMPORTANT NOTICE: Carefully follow preparation, cleaning and sterilisation instructions.”

Article 13 – Containers or labels of dummies shall bear the following warning: “IMPORTANT NOTICE: Dummies harm breastfeeding.”

Article 14 – Information sheets or technical notifications for products listed in Article 3 of this Decree shall contain information that is clear, visible and easy to read.

A decision of the Minister of Health shall outline the information to be contained in the documents listed in the preceding paragraph.

CHAPTER 4 Miscellaneous

Article 15 – Marketing of products listed in Article 3 of this Decree shall be subject to authorisation granted jointly by the Ministry of Health and the Ministry of Trade according to applicable rules.

CHAPTER 5 Administrative sanctions and penal provisions

Article 16 – Any owner of a pharmacy, any person responsible for a private healthcare institution or any private person who violates provisions of this Decree shall receive a written warning from the Minister of Health, without prejudice to the penalties prescribed by the code of ethics of their profession.

Article 17 – Any distributor of products listed in Article 3 of this Decree who violates provisions of this Decree shall receive either a warning or a fine, or have his licence for sale of the product temporarily or definitively cancelled.

The cancellation of a licence shall be issued by the Minister of Health, without prejudice to criminal prosecution.

Article 18 – Any person who violates provisions of this Decree shall be punished with a fine of 200,000 to 360,000 CFA Francs and a sentence of one or two months imprisonment, or one of these two penalties only.

In addition to the penalties provided for in the preceding paragraph, said person may have her or his professional licence withdrawn temporarily or definitively.

Should any products listed in Article 3 of this Decree be marketed without authorisation, they shall be seized and destroyed or given to specialised institutions.

CHAPTER 6

Transitory and final provisions

Article 19 – Economic actors dealing in marketing of products listed in Article 3 of this Decree shall have a twelve-month period from the date of entry into force of this Decree to comply with its provisions.

Article 20 – The modalities of application of this decree shall be fixed by order.

Article 21 – The Minister of Health and Fight Against AIDS, the Minister of Commerce, Handicrafts and Promotion of MSEs, the Minister of Industry and the Minister of Solidarity, Family, Women and Children shall be responsible, each in their respective field of competence, for the implementation of this Decree which shall be published in the Official Journal of the Republic of Cote d'Ivoire.

Done at Abidjan, 6 June 2013

Alassane OUATTARA
President of the Republic