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WENDY PANG  
HEAD OF IP AT DANONE'S WATERS, EARLY LIFE AND MEDICAL DIVISIONS

**'If we need to take a big fight  
to strengthen some  
of our brands, I'm ready  
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EARLY LIFE AND MEDICAL DIVISIONS

# Protecting and strengthening brands at Danone

When Isaac Carasso founded Danone in Barcelona in 1919, the company introduced Spanish doctors to the health benefits of yogurt. The yogurt was named after the founder's son Daniel, nicknamed 'Danon' in the local Catalan language. The brand name has remained an invaluable asset ever since. Today, with operations in over 140 countries, 22 billion euros in turnover and over 900 million consumers worldwide, Danone has become one of the world's leading food companies. Part of that success rests on the strength of its brands: Evian water, Nutricia medical nutrition and of course Danone dairy products are known the world over.



As the head of IP for three of Danone's product divisions, it is Wendy Pang's goal to protect and strengthen the Danone brands and thus ensure they will also contribute to the company's future success.

**Nearly three years ago you left private practice to become an in-house IP lawyer. What in your opinion is the biggest difference between both positions?**

"The main difference is in the proximity to the business. As an in-house IP-lawyer at Danone I am very much involved with developing strategies for our various brands. That means I'm working really closely with the business, much closer than you can work with your clients as an external lawyer. It means that a lot of the work I do now at Danone is not driven by IP as such, it's about using IP as a tool to reach a solution that the business wants."

**In order to contribute to Danone's business goals, what are the main items on your agenda and what are your goals for the next couple of years?**

"The first is risk management and risk reduction, the second is building stronger brands and a strong reputation for Danone. Risk management is now on everybody's mind. We obviously know very well how to deal with the standard risk management aspects like clearances and making sure we don't infringe the rights of third parties. Trying to identify any hidden risks is another aspect though that can be challenging in a global organization like Danone's. We need to ensure that local businesses are aware of and comply with agreements negotiated globally or regionally and vice versa. The potential damage resulting from such risks in terms of litigation or product recalls can be huge, hence the prominent position on my agenda."

**With respect to the second item on your agenda, how do you as an IP lawyer contribute to building stronger brands?**

"Building stronger brands requires that our team works together with local and global business teams. One part of that is educating them on IP issues and on the work that our team does, so we're not just seen as people who they can tell what trademarks to register. Another part of us working together with the business involves picking our core brands and identifying, with the people who develop these brands, what brand elements they think are key. We work closely with the marketing teams to determine what we want to stop third parties doing, and with that in mind, we can together identify which elements of their brand are most important to them. Then we decide how we can protect and build those elements going forward. Aside from appropriate IP protection, that means us stopping others from using those elements, but also from our side being strict on what variations on those key elements we allow local teams to use."

**So building stronger brands mainly involves working with the marketing teams?**

"Obviously the marketing teams are important internal clients of ours, but so are the innovation teams that develop and create new packaging. Sometimes with new packaging we want to protect both a technical innovation with a patent, as well as the new design elements that make the packaging stand out from other products on the market. So our team has to be working closely with the patent team and make sure we're lined up, for example to prevent that a patent is filed prematurely and thereby destroys novelty for us. In general, my job is a lot about investing in relationships and making sure we're all pulling in the same direction and really become business partners."

**So from an IP perspective, building stronger brands is not primarily about registering more trademarks or designs, but more about creating awareness and changing mindsets in the business?**

"Absolutely! We file, register and protect all these things, but you always have to ask what the purpose is. That is what I have also been trying to educate the business about. We have to know what is on the market and what other people are doing in terms of getting close to us and to actually stop that. So I'm very much not the type of IP lawyer that says we have got to register more trademarks. That requires a lot of time and resources which you then can not use on the things that actually matter. The aim is to build the strongest and most focused portfolio, not the most extensive portfolio."

**What would you say are the biggest challenges you face in managing a global IP portfolio?**

"One main challenge certainly is the global aspect of the job. Often our primary internal clients are working at a global level, rolling out for example a global marketing campaign in different countries. Now the teams in these countries sometimes want to do their own thing and add certain local elements. That can cause some conflict between global and local teams. For us that can be challenging, because both are our clients."

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**Do you have a general approach for resolving those issues?**

"Generally we start to work with global teams and try to understand what the global picture is. But the difficulty is that it doesn't always work in countries where there may be very specific regulations or local practices, and so we really get pushed sometimes by local businesses. We might for example have an overall IP policy that says we don't file what we are not going to use, or file things that might be descriptive. But in some countries in Asia for example, that doesn't work because there everything that is on the package has to be filed, otherwise the product can't be put on the market."

Another issue is consistency around the world. Some of our logos may have been used under different brands in different ways over many years. It is quite difficult to then be very strict and insist that it must be used in a certain color, for example. Part of my job is understanding the reasons behind the push from local teams and to determine if we really need to make an exception. Sometimes we have to be adaptable if there is a real business or legal need to depart from our normal rules, but we do also need to maintain our position at times, for example by educating global marketing as to what we do and why, and getting their help in pushing local marketing teams to understand as well."

**Are there certain red lines or issues where you can't deviate from your global IP policy?**

"Sure! It is much harder to budge when there is a risk in terms of third parties. We have had situations, for example, where we would have run the risk of infringing third party trademarks if we launched a product with a certain name. Therefore we worked out a co-existence agreement with our competitor that covers lots of different territories. That is where we need to make sure that everyone within Danone complies with the global agreement. Obviously on that we have to be very strict."

**How is the IP function within Danone organized, and what sort of formal voice or decision power does it have within Danone?**

"As part of the legal function the IP team reports to the General Secretary, a function that was created at the beginning of 2015 and that is part of Danone's Executive Committee. The General Secretary's office, which includes communications and public affairs, legal and regulatory affairs and compliance among others, has stated that building strong brands is one of their main objectives. It has appointed a Chief Brand Officer who is in charge of the equity of the DANONE brand."



This representation at the top level of the company shows the importance of our brands to the company, which also demonstrates the key importance of IP within the group. So lately the IP function has developed a more powerful voice. We are finding ourselves on some of the boards around Danone, and with that comes more impact. That will be enhanced even further with our new global IP policy that will be rolled out in 2016 through the General Secretary function around the world. The new IP policy is more formalized, with stricter rules that relate to both the risk management and building stronger brands aspects of the IP function."

#### What does the new IP policy include?

"Some of it sounds very obvious, there are general rules like not copying third parties' rights, and using our brands in ways that are consistent with our brand guidelines, et cetera. Of course we did have a brand protection policy before, but there was quite a low awareness of it. So the new policy is in part to increase awareness, and also to equip local teams to deal with simple or straightforward FAQs. But to me the key is: up to now some of these things haven't been passed onto marketing and legal teams in the form of rules they should adhere to and that will really be enforced. There has in the past been lack of clarity in terms of what are rules, what are guidelines, what is nice to have? That will become a lot clearer now."

#### How does this new IP policy affect the part of your job where you have to judge whether local teams have legitimate business reasons to deviate from global policy?

"The job will still be about that. The new IP policy really gives us the tools, or better equips us to do the job we do today. It gives us a formal backing, a backing that has been approved at a very high level within Danone. That is helpful because it provides us the support and legitimacy that we need."

#### Can you describe what a global consumer company like Danone faces in terms of infringements on its IP portfolio?

"The main difficulty that many consumer goods companies face is probably the private label issue. We have important relationships with the supermarkets that sell our products. Obviously we need to maintain those relationships if we want to keep selling our products. At the same time, as our biggest customers they are copying our get-up, getting sometimes very close to our products. That is definitely a challenge, especially being sensitive to the business relationships, and involves working closely with our commercial teams when deciding what action to take – but we have to be tough if we want to build and maintain strong brands."



Wendy Pang is the Head of IP for Danone's Waters, Early Life and Medical divisions. With her team of legal counsel, paralegals and trainees she manages all contentious and commercial IP issues at a global level and advises the business on the protection and enforcement of their trademarks, designs and copyrights.

Previously she was a Senior Associate in the IP Group of Baker & McKenzie's London office where she acted for her clients in litigation in the High Court, Court of Appeal and the European Court of Justice.

Wendy Pang graduated in 2000 from the University of Nottingham (B.A., Law with European Law, first class honours) and holds a Post Graduate Degree in IP from the University of Bristol (2006). She lives in Paris, France and is multi-lingual with fluency in English, Cantonese and French.

**Is there a red line with respect to how close you let copycats or private labels get, and how do you determine when to enforce your rights and fight back?**

"That has to be determined case-by-case. We look at the whole picture: how big our operation is, how big is our business with that brand, if we are operating in a particular country and if we have any potential challenge ourselves, and also if it is a business priority. One of the challenges I may face in this respect is to convince the business which is the right fight to pick and when – the business may be frustrated by a copycat or a private label but there may be circumstances that make it difficult for us to act. Obviously there are budgetary and PR considerations, but those are not the only reasons. Cases get harder if our brands or elements of our brands, like fruits used to designate the flavour of a drink, have a lower level of distinctiveness. So we have to make sure that the key elements of our brands are used consistently to build and maintain their distinctive character, which means working with the business around the world to ensure that we don't allow too much "playing" with our logos before they are strong enough. That might be something that marketing doesn't like because it limits their freedom, but this comes back to my push for wanting strong elements

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of our brands, not just the whole brand. People know what is easier to get away with and what is not, so they might just take the look, the color scheme, figurative elements and not the word element. And if in certain countries we are not well-known enough with those elements, then it makes it tougher to protect our brand there. We need to be even more vigilant about enforcing our rights and if appropriate, pick a target and send a message that is going to make some noise. A message to make it clear that Danone doesn't sit and not defend its rights, that we are active in that and we will stop people from getting too close to the line."

**So you are looking for a good fight?**

"It's good to occasionally have a fight with a lot of publicity, but you have to pick the right fight to build the reputation you want to have. One major successful case would then make it much easier to deal with potential future conflicts, because when for example you send a cease and desist letter, the counterparty will be more likely to back off from a fight. But I should be clear: it is certainly not the goal of an in-house IP lawyer to have litigation at all times, which would be very expensive. We will continue to try to resolve issues through alternative means, such as settlements and discussions. But if we need to take a big fight to strengthen some of our brands, I'm ready to do that."

ABOUT DANONE'S BRANDS

- In 2014 40 countries sold medical nutrition products under the Nutricia umbrella brand.
- More than 400 people are dedicated to Nutricia Early Life Nutrition's research & development.
- NLO Shieldmark is responsible for the global portfolios of Danone's Early Life Nutrition and Advanced Medical Nutrition.