

# The breast milk market is booming online: unregulated, risky, and entirely legal

January 15 2020, by Aoife Finnerty

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Credit: AI-generated image ([disclaimer](#))

For parents who want their child to have breast milk, but are unable produce it themselves, being able to buy it on the internet might seem like a hopeful solution. Many families might want to feed their infant breast milk for a [number of reasons](#), such as improving their child's immune system. This might lead families to turn to online forums or

Facebook groups to find women [selling their breast milk](#).

But the dark side of this online trade is that not only are there no laws restricting the sale of [breast milk](#) online—it's also unregulated in the UK and Ireland. This leaves parents vulnerable to buying [breast milk that is substandard or dangerous](#) for consumption by their child. However, in spite of this lack of regulation, existing laws might be able to assist if something goes wrong.

[Tort](#) is the area of law which deals with civil wrongs, as opposed to [criminal acts](#). A civil wrong or "tort" is an act that leads to injury or harm, for which courts impose [liability](#) on an individual. As the sale of substandard breast [milk](#) could lead to injury or harm, it may fall under an area of tort law called product liability or the [law on defective products](#). The courts do not impose a "punishment" for committing a tort, however, they often order defendants in tort cases to pay [monetary compensation](#) to the wronged person (known as the plaintiff). The idea of monetary compensation is to put the plaintiff back into the position they were in before being harmed.

Under the law, breast milk would likely be considered a "product" as similar substances, including animal milk, baby formula, and blood, are. For the same reasons, the woman who produced the milk would then be considered a "producer". Were a case to go to court, tainted breast milk might then be classified as a defective product.

Both [Ireland](#) and the [UK](#) have laws allowing customers to sue for harm caused by defective products. But it can be challenging for the person suing to win because they must prove that the product made by the producer was defective—and that this defect caused damage. In other words, a person would have to prove that the breast milk is what made them sick.

A product is defective when it fails to meet the standard that someone can reasonably expect it to meet. A court would ask how reasonable it is for the average person to expect that the breast milk bought on the internet would be safe. In deciding that, a court may consider the actions of the producer too. For example, if a woman sold her milk on a reputable site and advertised it as being "safe" or "drug-free", then it might be reasonable for the public to think that it would be those things.



Credit: Sarah Chai from Pexels

The difficult part of product liability is proving "[causation](#)"—meaning proving that you were harmed by the defective product. In the case of

breast milk bought online, "harm" would likely mean death or injury of the person consuming the milk. Contracting illnesses or bacterial infections, such as [Salmonella](#) or [Streptococcus](#) or viral infections, such as [HIV](#), could all constitute harm.

However, as previously mentioned, it isn't enough to suffer the harm. You must be able to prove that harm was caused by the product—not another source. This can be especially hard to do in the case of bacterial and viral infections. For example, salmonella can be carried by [household pets](#), such as reptiles, and common household foods like chicken and eggs.

HIV would be easier to prove, as it's only spread from the infected person through [certain body fluids](#), including blood and breast milk.

Even if you can prove that the harm was caused by the defective breast milk—and that it was reasonable to think the milk would be safe—there may be a further hurdle for the person suing to cross. A court may want to know what steps the parent took to prevent the harm. For example, studies have shown that [pasteurizing breast milk](#) can destroy many bacteria, and can even kill viruses, including [HIV](#). In court, a failure to pasteurize could mean that the plaintiff gets considerably less in compensation from the seller—or none at all. By failing to take reasonable precautions by pasteurizing the milk, the parent has some responsibility for the harm suffered.

But let's say a [child suffered seizures](#) from consuming breast milk containing cocaine. Although the buyer will still have to prove that the harm was caused by the milk, a [court](#) may not have the same reason to reduce (or refuse) compensation for harm. This is because pasteurization doesn't remove or inactivate drugs in breast milk, unlike with bacteria or viruses. And, it's not just [illegal drugs](#) that can cause side effects, but also prescriptions ones such as [painkillers](#) and [cardiovascular drugs](#).

Even though the sale and purchase of breast milk is not illegal, the practice may still fall afoul of the law. The practice of selling and buying [breast](#) milk online offers many uncertainties about the safety of the milk—and the lack of legal framework further endangers the health and wellbeing of infants. More regulations and legal restrictions will be necessary to protect the health of both infants, and other buyers.

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