

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Kellogg Company, File No. 082 3145

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Kellogg Company (“Respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising and promotion of Kellogg’s Frosted Mini-Wheats, a well-known breakfast cereal. According to the FTC complaint, Respondent represented, in various advertisements, that eating a bowl of Kellogg’s Frosted Mini-Wheats cereal for breakfast is clinically shown to improve kids’ attentiveness by nearly 20%. The complaint alleges that this claim is false or misleading because, in fact, in the clinical study referred to in respondent’s advertisements, only about half the kids who ate Frosted Mini-Wheats cereal showed any improvement after three hours as compared to their pre-breakfast baseline. In addition, overall, only one in seven kids who ate the cereal improved their attentiveness by 18% or more, and only about one in nine improved by 20% or more.

The FTC complaint also charges that Respondent represented, in other advertising, that eating a bowl of Kellogg’s Frosted Mini-Wheats cereal for breakfast is clinically shown to improve kids’ attentiveness by nearly 20% *when compared to kids who ate no breakfast*. The FTC alleges that this claim is also false or misleading, because in fact, kids in the clinical study who ate Frosted Mini-Wheats had an average of 10.6% better attentiveness three hours later than kids who had skipped breakfast. In addition, relatively few kids experienced better attentiveness near the 20% level.

The proposed consent order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Respondent from representing that (a) eating a bowl of Kellogg’s Frosted Mini-Wheats cereal for breakfast is clinically shown to improve kids’ attentiveness by nearly 20%, or any other specific percentage; and (b) eating a bowl of Kellogg’s Frosted Mini-Wheats cereal for breakfast is clinically shown to improve kids’ attentiveness by nearly 20%, or any other specific percentage, compared to kids who ate no breakfast, unless the representation is true and non-misleading at the time it is made.

Part II of the proposed order prohibits Respondent from making any representations in advertising for Frosted Mini-Wheats or any other morning food or snack food about the benefits, performance, or efficacy of the product for cognitive function, processes, or health, unless the representation is true and non-misleading. In addition, Respondent must possess competent and reliable scientific evidence for such claims.

Part III of the proposed order prohibits Respondent from making misrepresentations in advertising for any morning food or snack food about the existence, contents, validity, results, conclusions, or interpretations of any test, study or research.

Part IV of the proposed order states that the order does not prohibit Respondent from making representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Parts V through VIII of the proposed order require Respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.