

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Jon Leibowitz, Chairman**  
                                  **William E. Kovacic**  
                                  **J. Thomas Rosch**  
                                  **Edith Ramirez**  
                                  **Julie Brill**

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**In the Matter of**

**KELLOGG COMPANY,**  
                  **a corporation.**

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)        **DOCKET NO. C-4262**  
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**ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER**

The Commission issued a Complaint and a Decision and Order (“Order”) against Kellogg Company (“Kellogg”) in Docket C-4262 on July 27, 2009. The Complaint alleged that Kellogg had violated Sections 5(a) and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 52, by falsely claiming that a breakfast of Frosted Mini-Wheats cereal is clinically shown to improve children’s attentiveness by nearly 20%.

Beginning in approximately late July 2009, Kellogg disseminated or caused to be disseminated advertising for Kellogg’s Rice Krispies cereal, Kellogg’s Jumbo Multi-grain Krispies cereal, Kellogg’s Frosted Krispies cereal, and Kellogg’s Cocoa Krispies cereal (hereafter collectively “Krispies cereal”) that included representations about the benefits of Krispies cereal for children’s immunity. The staff opened an investigation into Kellogg’s dissemination of, and substantiation for, those representations.

In view of the foregoing, the Commission has determined in its discretion that it is in the public interest to reopen the proceeding in Docket No. C-4262, pursuant to Section 3.72(b) of the Commission’s Rules of Practice, 16 C.F.R. § 3.72(b), and to modify the Order, as set forth below. Among other things, the modification expands the product and claim coverage in Part II of the Order to require substantiation for all health claims for any food, and revises the definition of “competent and reliable scientific evidence” for purposes of substantiating such claims. Kellogg has consented to reopening this docket, has waived its rights under Section 3.72(b) of the Commission’s Rules of Practice, 16 C.F.R. § 3.72(b), and has consented to the modifications set forth below. Accordingly,

**IT IS ORDERED** that this matter be, and it hereby is, reopened.

**IT IS FURTHER ORDERED** that the Order in Docket No. C-4262 be, and it hereby is, modified to delete Definition number 3, and to renumber Definitions 4, 5, and 6 as Definitions 3, 4, and 5, respectively.

**IT IS FURTHER ORDERED** that the Order in Docket No. C-4262 be, and it hereby is, modified to replace the current language in Part II with the following:

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Kellogg's® Frosted Mini-Wheats® cereal or any other food, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a trade name or endorsement, about:

- A. the benefits, performance, or efficacy of such product for cognitive function, cognitive processes, or cognitive health; or
- B. any other health benefit of such product;

unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

**IT IS FURTHER ORDERED** that the Order in Docket No. C-4262 be, and it hereby is, modified to replace the current language in Part IX with the following:

IX.

This order, as modified on May 28, 2010, will terminate on May 28, 2030, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: May 28, 2010