

In the Matter of Kellogg Company, FTC Docket No. C-4262

Concurring Statement of Commissioner Julie Brill
and Chairman Jon Leibowitz

June 3, 2010

Today the Commission announced that it has modified the order previously entered in this matter to bar the world's leading producer of breakfast cereals, the Kellogg Company ("Kellogg"), from making unsubstantiated or misleading claims about the health benefit of any food it produces, markets, or sells. The Commission's action is in response to dubious health claims made by Kellogg regarding the ability of its Rice Krispies cereal to boost children's immunity. We approve of the Commission's action announced today, and we appreciate the hard work of FTC staff who obtained the order modification.

We write separately, however, because we are concerned that while Kellogg was developing its questionable Rice Krispies campaign last year, it was simultaneously negotiating with the FTC to resolve earlier allegations that the company had deceptively marketed Frosted Mini-Wheats as improving children's attentiveness.

In April 2009, the Commission made public its concern that Kellogg had engaged in false advertising by claiming repeatedly — on the Internet, in print ads, on TV, and on product packaging — that eating a bowl of Frosted Mini-Wheats cereal was "clinically shown to improve kids' attentiveness by nearly 20%."¹ The Commission alleged that the claims were untrue and therefore violated Sections 5 and 12 of the FTC Act.² Kellogg resolved the Commission's concern about the Frosted Mini-Wheats campaign by agreeing in February 2009 to a proposed consent order that prohibits Kellogg from making false or unsubstantiated claims about

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