

Kellogg to pay millions in kids' attention class action settlement

By Shane Starling, 22-Nov-2010

The Kellogg Company will pay consumers up to \$2.75m over misleading kids' attention claims for its Frosted Mini-Wheats cereals, after a federal judge reached a class action settlement.

Kellogg has frosted attention-improving claims for this and other cereals

Kellogg agreed to pay disgruntled consumers who bought the cereals that claimed to be *"clinically shown to improve children's attentiveness by nearly 20%"* between \$5 and \$15 each from a fund of \$2.75m.

It also agreed to give \$5.5m to charities working to improve nutrition among underprivileged American citizens and cease making the attention claims for three years.

The settlement follows a similar 2009 settlement with the increasingly claims-active Federal Trade Commission (FTC) where Michigan-based Kellogg agreed to amend the claims.

Washington DC-based legal firm, Manatt, Phelps & Phillips, observed that although Kellogg could no longer make that specific claim, it could make similar claims if it could back them with appropriate data.

"However, Kellogg may make claims about the impact on attentiveness from eating the product, as long as it limits and qualifies its claims," the firm said in a blog.

It said statements such as, *"Clinical studies have shown that kids who eat a filling breakfast like Frosted Mini-Wheats have an 11% better attentiveness in school than kids who skip breakfast,"* could be acceptable under the settlement if backed by appropriate evidence.

But despite recent FTC settlements with Nestle and Iovate Health Sciences that have highlighted the fact such substantiation must include two randomised, clinical trials, there is no official standard in place.

Indeed at the recent NutraIngredients weight management virtual trade show, the FTC attorney Devin Domond affirmed that the FTC views such substantiation matters very much on a case-by-case basis.

Joel Rothman from the Florida office of the legal firm Arnstein & Lehr noted no such standard was in place.

"The FTC standard of adequate and substantial scientific evidence has always been elusive," he said.

"This settlement does not clarify the issue. However, prior settlements between FTC and Kellogg's did," he added referring to the FTC- Frosted Mini-Wheats settlement of April 2009, and a settlement over unvalidated immunity claims being made for Rice Krispies reached in March this year.

In the April 2009 Frosted Mini-Wheats settlement, the FTC stated only that, *"competent and reliable scientific evidence means test, 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."*

To see how the claims were made on television click on exhibit A and B at the bottom of the following page <http://www.foodnavigator-usa.com/Legislation/Kellogg-to-pay-millions-in-kids-attention-class-action-settlement/>