



DENNIS J. HERRERA
City Attorney

DIRECT DIAL: (415) 554-4748
E-MAIL: tara.collins@sfgov.org

October 27, 2009

Mr. A.D. David Mackay
President and Chief Executive Officer
Kellogg Company
One Kellogg Square
P.O. Box 3599
Battle Creek, MI 49016

Re: Immunity Claims For Kellogg's Children's Cereals

Dear Mr. Mackay:

I am writing to express my serious concerns about Kellogg's advertising of sugary children's breakfast cereals with the claims, "Now Helps Support Your Child's Immunity" on the front of the package and "[N]ow each and every box is fortified with vitamins and nutrients that work together to help support your child's immunity" on your website ("Immunity Claims"). Products marketed with these claims, including most notably Cocoa Krispies, have begun appearing in recent months on store shelves in the City and County of San Francisco.

I am concerned that the prominent use of the Immunity Claims to advertise a sugar-laden, chocolate cereal like Cocoa Krispies may mislead and deceive parents of young children. Specifically, the Immunity Claims may falsely suggest to parents that cereals like Cocoa Krispies are more healthy for their children than other breakfast foods that are not high in sugar and not highly processed. The Immunity Claims may also mislead parents into believing that serving this sugary cereal will actually boost their child's immunity, leaving parents less likely to take more productive steps to protect their children's health. At a time when parents are increasingly worried about the spread of the H1N1 virus ("swine flu"), it is vitally important that parents receive accurate information about what they can do to protect their children's health. Thus, in addition to constituting a potential violation of California's Unfair Competition Law, the Immunity Claims may undermine critical public health efforts to prevent the spread of a disease that the President has declared to be national emergency.

Pursuant to California Business and Professions Code § 17508, which empowers city attorneys to request substantiation of purportedly fact-based advertising claims, we hereby request that you provide evidence of the facts upon which Kellogg's Immunity Claims are based. Specifically, we request that you provide us with the following information:

1. Any consumer research, including but not limited to focus groups, marketing studies, and consumer surveys, that you conducted or commissioned or upon which you relied concerning the Immunity Claims, along with copies of said research;
2. Any scientific research, studies or other documents that you conducted or commissioned or upon which you relied concerning the Immunity Claims, along with copies of said research; and

Letter to Mr. A.D. David Mackay

Page 2

October 27, 2009

3. To the extent not already identified in response to requests nos. 1 and 2, all sources, studies, research or other documents on which the Immunity Claims are based, along with copies of said sources, studies, research or other documents.

To the extent available, with respect to requests nos. 1 through 3 above, please provide full reports of experiments, methods, results, and outcomes, in addition to the CVs of the individuals who performed the research.

I ask that you provide the requested information within 30 days of the date of this letter. Please forward the requested information to Deputy City Attorneys Francesca Gessner and Tara Steeley, Office of the City Attorney, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102-4682. Failure to respond within this time permits the City Attorney to seek an immediate termination or modification of the advertising claim in accordance with Section 17535 of the California Business and Professions Code. Should you have any questions, please contact Ms. Gessner or Ms. Steeley at 415-554-4700.

Very truly yours,



DENNIS J. HERRERA
City Attorney

cc: Dr. Margaret Hamburg, Commissioner, Food and Drug Administration
Ann Ravel, Deputy Assistant Attorney General for the Torts Branch and the Office of Consumer Litigation, U.S. Department of Justice